

DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION  
NO. 15-20713

TOMMY LEE JONES,

Defendant.

\_\_\_\_\_ /

JURY TRIAL-VOLUME 2  
BEFORE THE HONORABLE JOHN CORBETT O'MEARA  
United States District Judge  
Ann Arbor U.S. Courthouse & Federal Building  
200 East Liberty Street  
Ann Arbor, Michigan  
Tuesday, November 1, 2016

APPEARANCES:

MARGARET M. SMITH  
United States Attorney's Office  
211 West Fort Street-Suite 2001  
Detroit, Michigan 48226-3220  
313-226-9135  
Email: Margaret.Smith@usdoj.gov  
On behalf of Plaintiff.

JOHN F. ROYAL  
615 Griswold  
Suite 1724  
Detroit, Michigan 48226  
313-962-3738  
Email: johnroyal@ameritech.net  
ALSO PRESENT: Denise Heberle, Esq.  
On behalf of Defendant.

- - -

Andrea E. Wabeke, CSR, RMR, CRR  
Official Court Reporter  
www.transcriptorders.com  
734.741.2106 x2212

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1 Ann Arbor, Michigan

2 November 1, 2016

3 9:28 a.m.

4 - - - -

5 **THE CLERK:** Court calls the matter of United States  
6 of America versus Tommy Lee Jones, case number 15-20713.

7 **THE COURT:** Counsel please put your appearances on  
8 the record.

9 **MS. SMITH:** Good morning, your Honor. Maggie Smith  
10 appearing on behalf of the United States, and with me at  
11 counsel table is Special Agent Raymond Nichols with the FBI,  
12 and paralegal specialist Danielle Fawaz with my office.

13 **THE COURT:** Good morning.

14 **MR. ROYAL:** Good morning, your Honor. May it please  
15 the Court. John Royal appearing as attorney of record on  
16 behalf of Tommy Jones, and Mr. Jones is standing next to me  
17 here at counsel table, and I'm also assisted today once again  
18 by Attorney Denise Heberle. Thank you, your Honor.

19 **THE COURT:** Thank you. You can sit down for a  
20 minute. We have this note that was read to you at the end of  
21 the day yesterday, which has to do with the need that one juror  
22 has to go on the universal prepaid vacation. Before I started  
23 sitting with juries and maybe with clients before that, I never  
24 knew there was such a thing as a prepaid vacation, but they all  
25 are now. I don't know how that works, but she's -- she says

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1 she's going to be leaving the country on Friday and will not  
2 return until next Wednesday and I -- Mr. Barkholz and I have  
3 discussed this morning the possibility that she could be absent  
4 a day next week and we wouldn't be in session that day, but she  
5 clearly is saying that she wouldn't return until Wednesday, and  
6 that's two days, and I assume that she's -- unless we do  
7 something that we aren't going to do to maintain her in place,  
8 that she's excusable and we won't have her on the jury and I --  
9 you can make a record with regard to anything you want to say  
10 about that, but go ahead.

11 **MS. SMITH:** Thank you, your Honor. I don't have an  
12 objection if you make the determination that she ought to be  
13 excused. I don't think this would be the first case where we'd  
14 only have one alternate to choose from at the end, but I don't  
15 think that we should delay this trial or take an additional day  
16 off to accommodate her prepaid vacation. So I have no  
17 objection if you wish to excuse her and we could go ahead --

18 **THE COURT:** That's really my conclusion too. Maybe  
19 one day off would be something we can talk about; I don't think  
20 two days is though. Yes, sir?

21 **MR. ROYAL:** Your Honor, I do object to excusing her.  
22 When I'm selecting a jury I'm looking for a certain mix of  
23 people who I think will interact in a productive way and this  
24 particular juror was an essential part of the mix of jurors  
25 that I saw in this jury box, and I -- I had four peremptory

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1 challenges left that I did not exercise, and if this juror had  
2 not been in the box, I probably would have continued to  
3 exercise challenges trying to recreate a particular mix of  
4 people.

5           So if the Court is inclined to excuse this juror, I  
6 would like the record to reflect that I am moving for a  
7 mistrial and suggest that we start over again. My suggestion  
8 would be, and this is not unusual in federal court trials, I  
9 know I've had trials where the Court took a week vacation in  
10 the middle of a trial. I don't have any problem with delaying  
11 this trial by a couple of days to accommodate this juror's  
12 vacation and we could resume next week upon her return. So my  
13 position is that we should accommodate her rather than excusing  
14 her at this time.

15           **THE COURT:** I understand your position, and the  
16 record now is clear on that, and I even understand why you're  
17 in the position that you want to file that objection and maybe  
18 even realize upon it if that's possible, but I don't think, as  
19 I said, that two days off is justified, and we all end up with  
20 jurors we don't understand, and I will let Miss Ogburn out, and  
21 maybe there are two others, but maybe not the right color, and  
22 I understand that. Maybe they're not African-American, but I'm  
23 not going to do what was apparently done until the Sixth  
24 Circuit told us we couldn't. I'm not going to make decisions  
25 based upon anybody's race, one way or another, and so I guess

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1 based upon what the Government says, I will tell Miss Ogburn  
2 that she is excused and your motion for a mistrial is denied,  
3 but you've made it.

4 **MR. ROYAL:** Thank you, your Honor.

5 **THE COURT:** The record is -- yes?

6 **MS. SMITH:** Your Honor, I have one matter I'd like to  
7 put on the record before we bring in the jury, if I may.

8 **THE COURT:** Yes.

9 **MS. SMITH:** Yesterday, we had a discussion about a  
10 couple of things regarding potential impeachment material for  
11 Special Agent Nichols. I want to place on the record that this  
12 morning I turned over to the Defense that second search warrant  
13 that he had requested. It was an affidavit that was dated  
14 January of 2016. I turned that over to the Defense this  
15 morning.

16 Secondly, I did a little bit of research on  
17 impeachment material as it pertains to that picture that the  
18 Defense has asked me to produce, and it is my position that  
19 when Special Agent Nichols testifies, if the Defense attorney  
20 so chooses, he may use that picture for impeachment purposes  
21 only. I believe it's an extrinsic piece of evidence that is  
22 inadmissible and also cannot be used with any other witness,  
23 but I'm not going to object if he wants to attempt to impeach  
24 him with using that picture during cross examination.

25 **THE COURT:** I understand what you're saying, and it's

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1 conceivable, I suppose, that the Defense might take a different  
2 position on that and if they do, we can resolve it at the time  
3 it happens as far as using it for impeachment goes.

4 **MS. SMITH:** Thank you, your Honor.

5 **MR. ROYAL:** I acknowledge receipt of the application  
6 for the second search warrant. I acknowledge being informed by  
7 Ms. Smith of her position with respect to that photograph. I  
8 obviously disagree with the issue of being able to use it for  
9 impeachment, but I appreciate making it available and I will be  
10 using it during my examination of Agent Nichols.

11 **THE COURT:** Thank you. Anything else?

12 **MS. SMITH:** Not from the United States, your Honor.

13 **MR. ROYAL:** No.

14 **THE COURT:** We're ready for opening?

15 **MR. ROYAL:** One thing, your Honor. I received  
16 yesterday for the first time copies of the Government's trial  
17 exhibits, and last night I -- because the standing order for  
18 discovery of this Court requires that objections to exhibits be  
19 made promptly after receiving them, I prepared last night a  
20 document that I've entitled Defendant Tommy Lee Jones  
21 Foundational and Other Objections to Government's Proposed  
22 Exhibits. This document contains some objections that I will  
23 be making during the course of the trial. It may be that as  
24 testimony proceeds I will withdraw some of these objections,  
25 but I just wanted the Court to know I did file this document.

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1 I've presented copies to counsel and to the Court and my  
2 secretary will be filing it electronically this morning.

3 **THE COURT:** Thank you. It's noted. Anything further  
4 before I bring the jury in?

5 **MS. SMITH:** No, your Honor.

6 **MR. ROYAL:** Not from the Defense, your Honor.

7 **THE COURT:** Let's bring in the jury.

8 (Jury in 9:38 a.m.)

9 **THE COURT:** Members of the jury, please be seated.  
10 Thank you for being here. Thank you for planning the traffic  
11 on the road which in some cases I think was fairly severe this  
12 morning.

13 We have a special situation which we'd rather not  
14 have but which we've got to deal with, and that is that, is it  
15 Juror Number 12, Miss Ogburn, you have -- you're going to be  
16 out of the country?

17 **JUROR NO. 12:** Yes.

18 **THE COURT:** And we have discussed this and  
19 concluded -- the Court has concluded that there is no way to  
20 adjourn what we're doing here for a period of time when you're  
21 out of the country. So we're going to excuse you -- I'm going  
22 to excuse you as of right now. If you'd gather all of your  
23 materials, books, coat whatever you've got to have, and thank  
24 you --

25 **JUROR NO. 12:** Thank you.

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1       **THE COURT:**   -- for your service and have a good trip.

2 || JUROR NO. 12: Thank you.

3                   **THE COURT:** We now have 13 of you in the jury box and  
4 we'll go with that. I just want to --

5 (Juror No. 12 left the courtroom at 9:39 a.m.)

6                   **THE COURT:** And now we're at that point where the  
7 parties make opening statements and the Government can make its  
8 opening statement.

9                   **MS. SMITH:** Thank you, your Honor. May I begin?

10       **THE COURT:** Excuse me?

11                   **MS. SMITH:** May I begin?

12 THE COURT: I'm sorry?

13                   **MS. SMITH:** May I begin?

14                   **THE COURT:** You may begin.

15 (9:40 a.m.)

16                   **MS. SMITH:** Thank you. Secrets and lies. On the  
17 morning of October 23rd, 2015, a little over a year ago today,  
18 the Defendant's secret life on the Internet was about to be  
19 revealed, because just a few days before that, FBI Special  
20 Agent Ray Nichols was working hard undercover to find people  
21 who were trading child pornography on-line.

22                   Now, how do people conduct this illegal activity?

23   You're going to learn that there are special file sharing

24   programs, software available on the Internet. Sometimes it's

25   called peer-to-peer file sharing programs. They're available

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1 to download off the Internet. One of those programs is called  
2 Ares, A-r-e-s, like the zodiac symbol. The Ares program allows  
3 users to share electronic files with each other over the  
4 Internet. Basically, it's group of individual computers across  
5 the country or even across the world that are hooked in  
6 together so that they can share their files with each other.

7 This is just a small graphic to explain how peer to  
8 peer works. In any given network, there could be hundreds, if  
9 not thousands of these computers all connected with each other  
10 communicating, if you will, with each other.

11 Not only that, but users of peer-to-peer softwares  
12 can title their files in such a way as to draw attention to the  
13 files that they're offering up to others and gain more traffic  
14 into their peer-to-peer program. Just to give you an example.  
15 Let's say you had a peer-to-peer program and you wanted to find  
16 files that had to do with Corvettes. When you open up the Ares  
17 peer-to-peer, you have an opportunity to type into the search  
18 bar, you type in a word that you're looking for and then the  
19 program will go out to all of those other computers that are  
20 hooked in with you and look for any files that have the word  
21 "Corvette" in them. You could get music files. You could get  
22 video files. You could get image files.

23 The program will compile a list for you in your  
24 program and you select the files that you want to keep. You  
25 check them off. You download them to your computer, and then

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1 they're yours.

2 Now, the people that Special Agent Nichols was  
3 investigating back last October weren't trading pictures of  
4 cars. They weren't trading recipes or even bootleg copies of  
5 movies that are now in theaters. No. Special Agent Nichols  
6 was undercover looking for individuals who were trading up  
7 files of child pornography. You're going to learn through this  
8 case that the currency isn't cash, it's additional images and  
9 videos. The underground world of child pornography can only  
10 survive by like-minded people giving out files to get new files  
11 in return, and that's the best way to commit this crime,  
12 because as you will learn, the FBI doesn't ever send out child  
13 pornography, ever.

14 Secrets. The evidence is going to show that between  
15 October 18th and 19th, 2015, the Defendant was offering up 24  
16 files that caught Special Agent Nichols' attention. Why did  
17 they catch his attention? Because they either contained a  
18 unique identifier -- that is sometimes called a hash value --  
19 that's indicative of child pornography or the files contained  
20 key words that would indicate that they were full of child  
21 pornography. Child pornographers, you're going to learn, have  
22 their own secret language and terms that mean nothing to you  
23 and me are actually secret terms used by people to advertise  
24 and trade their child pornography on-line.

25 Now, this is a chart you'll see later on in this case

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1 that shows a number of downloads under the file name -- I'm  
2 going to -- these are the last three files. Let me give you an  
3 example of these secret terms. You see the letters P-T-H-C,  
4 which is -- on the last one, africa tribe pthc, as well as the  
5 one up top where it says "pthc". That's an acronym. That  
6 probably means nothing to you and me, but it actually stands  
7 for Preteen Hardcore. It's one of those terms that child  
8 pornographers know to use when they're looking for particular  
9 files on the Internet.

10 Special Agent Nichols will explain to you that  
11 between October 18th and 19th, he was able to download a number  
12 of files from the Defendant. They were all video files. They  
13 ranged in time from just under 20 seconds to over a half an  
14 hour, and when he watched those videos, he saw children or what  
15 appeared to be children being forced to engage in sex acts  
16 alone, with other children and with adults.

17 Special Agent Nichols got to work tracking down the  
18 house that had this particular Internet address that had given  
19 him those files, and a few days after his undercover session,  
20 he and his team executed a federal search warrant at the  
21 Defendant's house in Dearborn Heights, Michigan.

22 Secrets. Before obtaining the search warrant,  
23 Special Agent Nichols did his due diligence and looked into the  
24 Defendant's criminal history. As it turned out, in 1991 he was  
25 convicted of a crime called gross sexual imposition of a minor.

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1 The victim was the Defendant's nine-year-old sister.

2 Lies. On the day of the search warrant, agents made  
3 entry into the house and discovered the Defendant and his  
4 pregnant stepdaughter, Courtney. You're going to learn that  
5 she shared a bed with him in the basement of that house while  
6 her mother, Defendant's wife, slept on the pullout couch in the  
7 upstairs room, and she was pregnant with his child. While 21  
8 years old a year ago, the Defendant eventually admitted that  
9 he'd engaged her in a sexual relationship as early as 16 years  
10 old.

11 During the execution of that search warrant, the  
12 agents located and seized a laptop computer which contained  
13 evidence of that Ares peer-to-peer file sharing program, as  
14 well as over 20 videos that depict what appear to be children  
15 engaged in sexual activity. Some of the videos that Special  
16 Agent Nichols had downloaded back on October 18th and 19th were  
17 found on the Defendant's computer hidden in a secret folder on  
18 his hard drive.

19 Special Agent Nichols also recovered hundreds of  
20 search terms that the Defendant had typed into that  
21 peer-to-peer program when looking for files. Do you remember  
22 that secret language we talked about earlier? The evidence  
23 will show that the Defendant knew that, knew it well, and used  
24 it, and during the search that day, you will learn that the  
25 Defendant confessed, not once but twice to different agents

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1 about his on-line behavior; his secrets revealed. He admitted  
2 to downloading child pornography. He estimated that he  
3 downloaded files less than 100 times, although the agents found  
4 more than three times that amount going through the Ares  
5 registry.

6 Ladies and gentlemen, these videos show the shameful  
7 secrets of hundreds of sexual abusers all over the world,  
8 prepubescent children, naked, exposing their genitals, being  
9 forced to pose for the camera that would forever memorialize  
10 their sexual abuse, children being raped and sodomized and  
11 forced to perform oral sex on adults.

12 During the course of this trial, we will prove that  
13 this Defendant, using the Internet and his Ares peer-to-peer  
14 file sharing program, advertised, distributed, received and  
15 possessed sexually explicit videos involving children.

16 During the course of this trial, you're going to meet  
17 some of the agents involved in this investigation. You've  
18 heard their names yesterday during jury selection. You're  
19 first going to meet Special Agent Nichols and he's going to  
20 testify twice during this trial. First, he will testify and  
21 explain to you the undercover investigation and the search  
22 warrant and testify to the Defendant's confession. Later on in  
23 this case, he will testify again as the forensic examiner of  
24 the laptop computer that was seized from the Defendant, and as  
25 I stated yesterday you're also going to see the evidence of the

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1 video files. Understandably, this may not be easy for you, but  
2 of hours and hours of video in this case, I have clipped it  
3 down to four exhibits each under 30 seconds a piece. Before I  
4 publish any of this material to you, the agent on the stand  
5 will give a general description and we will alert you that it's  
6 going to be displayed.

7 Now, at the end of this case, the Judge is going to  
8 instruct you on the law, but it really is not complicated. The  
9 Defendant has been charged with four separate counts,  
10 advertising child pornography, distributing child pornography,  
11 receiving child pornography and possessing child pornography.

12 It is the Government's burden to prove each and every  
13 element of these offenses beyond a reasonable doubt, and at the  
14 end of the trial, we will have done just that. Ladies and  
15 gentlemen, this is a simple case. The Defendant used the  
16 Internet to fuel his sexual desires by providing, trading,  
17 distributing and downloading videos of children being forced to  
18 engage in sex acts, and when you have seen and heard all the  
19 evidence in this case, we will have proven well beyond all  
20 reasonable doubt that this man is guilty of the crimes charged,  
21 and I will ask you to hold him accountable. Thank you. Thank  
22 you, your Honor.

23 **THE COURT:** Thank you, Ms. Smith. And for the  
24 Defendant.

(9:52 a.m.)

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1           **MR. ROYAL:** Thank you, your Honor. May I begin?

2           **THE COURT:** You may.

3           **MR. ROYAL:** Good morning, ladies and gentlemen. I'm  
4 sure you all understand that this is a very serious case and I  
5 appreciate and my client appreciates your willingness to  
6 participate in this process and not come up with some excuse as  
7 to why you should be excused for jury service. So we thank you  
8 in advance for giving up your time and paying attention closely  
9 to the very important testimony and the issues in this  
10 particular case.

11           Ms. Smith has just spoken to you. She is the  
12 Assistant United States Attorney assigned to handle this case.  
13 I now have the opportunity to speak to you on behalf of my  
14 client, Tommy Lee Jones, to give you some idea of how we view  
15 this case and our view on some of the evidence you will be  
16 hearing, but you should understand that the statements of the  
17 attorneys, either now or throughout the trial, are not  
18 evidence. Neither Ms. Smith nor I have any personal knowledge  
19 about this case. Under our rules of evidence, you have to  
20 judge this case based on the testimony of the witnesses who  
21 have personal knowledge and who can be examined and cross  
22 examined about their observations and their information for you  
23 to consider.

24           In addition, the opening statements are really an  
25 idea to give you sort of an outline or a framework of how the

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1 case is set up so that as each individual witness testifies,  
2 you'll have some idea where they fit in. You will have to  
3 judge a case by the witnesses and not by the attorneys.

4 Now, you've heard that there's been an indictment  
5 issued. An indictment is just a piece of paper that informs my  
6 client of the charges against him. There are certain things  
7 that are not evidence. The fact that an indictment has been  
8 issued is not evidence. The fact that my client has been  
9 arrested and brought to trial in this case, none of this is  
10 evidence that he's done something wrong. The indictment states  
11 charges that the Prosecutor is here to try to prove to you  
12 beyond a reasonable doubt. If they are not able to prove these  
13 charges beyond a reasonable doubt, then my client retains his  
14 presumption of innocence and you would have to return a verdict  
15 of not guilty.

16 Now, during this trial, there's going to be a lot of  
17 evidence. There's a whole binder of documents and exhibits.  
18 You're going to see some videos. Some things I will be  
19 objecting to; some things I will not. Please keep in mind that  
20 my objections are based upon legal principles. The fact that I  
21 don't object to an exhibit does not mean that I think it's  
22 meaningful or important or accurate. You'll have to decide  
23 those issues from each exhibit based upon the testimony and the  
24 evidence.

25 Now, there is no dispute in this case that you will

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1 be seeing child pornography, the videos that you will be seeing  
2 we're not claiming they're not child pornography. That's not  
3 an issue. The Government is required to show you some portion  
4 of the evidence because ultimately you have to make the  
5 finding, even if it's not an issue that's in dispute, but you  
6 don't have worry about agonizing over that because we agree  
7 that these videos do contain child pornography.

8 Now, my client, as you've heard, lived with his  
9 family in Dearborn Heights, and he was an employee for Wide  
10 Open West, for WOW. He was a service technician who went out  
11 every day on calls to various homes to deal with their cable  
12 and Internet issues, and because he was an employee, he had the  
13 ability to have a subscription to internet and cable service  
14 through WOW at a special rate, and so he had signed up to have  
15 those services through that company.

16 He lived with his wife, Tiffany Jones, and his  
17 stepdaughter, Courtney, had been raised by her grandmother in  
18 Cleveland until she reached the age of 16, and at that point,  
19 she moved to Dearborn Heights and lived thereafter with her  
20 mother and stepfather. A short distance away, just a few short  
21 blocks away lived my client's son, Tommy Lee Jones, III, and  
22 that's an important fact to know, because one of the issues in  
23 this case is going to be how videos came to be accessible to  
24 the federal agents during their investigation.

25 You will learn during this trial that my client was

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1 trying to hedge somewhat on his Internet service. He was  
2 trying to set up a what's called a WiFi extender that would  
3 extend the range of people who could get on to the Internet  
4 essentially through his computer, and that the idea was to try  
5 to set it up so that his son would be able to get on the  
6 Internet for free by hooking on to the Internet connection in  
7 his home. Although they never successfully got the son hooked  
8 on to the Internet, they did put an extender on that covered a  
9 substantial part of the immediate neighborhood, meaning that  
10 anyone who had -- who was searching for a connection for their  
11 Internet, a wireless connection, who found their connection  
12 could hook onto, and these are important facts that you'll be  
13 learning about during the trial.

14 Now, there's a lot of issues in this trial that we  
15 submit have little, if any, connection to the testimony and the  
16 evidence. Although my client has no obligation to testify, as  
17 you've been told, I can tell you now he will be testifying in  
18 this trial. He does want to explain to you in his own words  
19 what happened. He wants you to see and hear it from him  
20 directly, and he will be explaining to you about the situation  
21 in Ohio 25 years ago, when he was 21 years old and he was  
22 accused of something by his younger sister, and he will explain  
23 to you the circumstances that led to him pleading guilty to the  
24 reduced charge and getting a sentence of probation for that  
25 offense.

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1           Unfortunately, his sister was subsequently the victim  
2 of an unrelated homicide and is not someone we can call to  
3 testify -- for her to testify so she could explain the  
4 circumstances under which that case in Ohio came to be, but we  
5 will explain it to you as best that we can.

6           It's also important to keep in mind that your job as  
7 jurors is to decide whether or not the Government has proven  
8 these four charges or any of them beyond a reasonable doubt.  
9 You're not here to sit in judgment over my client's lifestyle  
10 or his values or his morality. I don't condone the fact that  
11 he became sexually involved with his stepdaughter. I don't  
12 condone the fact that she in fact has given birth to a child  
13 that he is the father of. We dispute the age at which their  
14 sexual involvement began. We believe the testimony -- the  
15 credible testimony and evidence will show that this did not  
16 begin until after she was 18. But you're not going to be asked  
17 to judge whether he's a good or bad person because he engaged  
18 in an activity that we might disprove of or find to be immoral.  
19 That evidence is being presented to you for a limited purpose  
20 and you'll be instructed on it by Judge O'Meara at some point  
21 before the end of the trial.

22           So please keep in mind the issue here are the four  
23 counts related to child pornography. Those are the issues that  
24 you have to decide and decide whether or not the Government has  
25 proven them beyond a reasonable doubt.

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1           Now, during the jury selection, you were basically  
2 told that you should hear all the evidence, all the trial  
3 before you start to begin to make up your mind about this case,  
4 and that's especially important because under our rules of  
5 procedure, the Government presents their case first. That's  
6 because they have the burden of proof. So I'm asking all of  
7 you to please refrain from judging this case until the Defense  
8 has had a chance to present our evidence and you've had a  
9 chance to hear our closing arguments, because at the end of the  
10 trial, after both sides have rested, both Ms. Smith and I will  
11 have a chance to address you again in closing argument and I  
12 will at that time highlight for you the areas of reasonable  
13 doubt in this case that will be apparent from the testimony and  
14 evidence that you have heard. I will ask you at that time to  
15 closely examine those areas and to return the only verdict that  
16 would be consistent with fairness and justice and that will be  
17 a verdict of not guilty. Thank you very much, ladies and  
18 gentlemen.

19           **THE COURT:** Thank you, Mr. Royal. And Ms. Smith, are  
20 you ready with your first witness?

21           **MS. SMITH:** Yes, I am, your Honor. The United States  
22 calls Special Agent Raymond Nichols.

23                           **RAYMOND NICHOLS**  
24 was thereupon called as a witness herein, and after having  
first been duly sworn at about 10:02 a.m. a.m. was examined  
and testified as follows:

25           **THE COURT:** Welcome, Agent Nichols. Please be

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1 seated.

2 **THE WITNESS:** Thank you, sir.

3 **DIRECT EXAMINATION**

4 **BY MS. SMITH:**

5 **Q** Good morning.

6 **A** Good morning.

7 **Q** I'm just going to try to arrange this lectern so the jury  
8 can see the screen. Can everybody can see the screen through  
9 here? Okay. I don't think I have much cord left to work with.

10 Could you please introduce yourself to the jury?

11 **A** Yes. My name is Special Agent Ray Nichols with the FBI.

12 **Q** What is your educational background?

13 **A** I obtained a Bachelor's degree in computer information  
14 systems in 2003.

15 **Q** What year did you join the FBI?

16 **A** It would have been February of 2012.

17 **Q** Since February of 2012, what areas have you been assigned  
18 to?

19 **A** So out of the academy I was assigned to the Detroit  
20 division. Initially, I worked cyber crimes and those included  
21 cyber intrusions and Internet fraud. I was then assigned to a  
22 national security squad, and after that, I was assigned to work  
23 child pornography matters as a member of a task force.

24 **Q** And are you currently a member of that task force?

25 **A** Yes.

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1 Q What's it called?

2 A It's called the Southeast Michigan Trafficking and  
3 Exploitation Crimes Task Force. It is SEMTAC for short.

4 Q Did it have a different name prior to being SEMTAC?

5 A Yes. So initially that task force was called SEMCAC which  
6 stood for Southeast Michigan Crimes Against Children Task  
7 Force. However, the middle of last year we also --

8 MR. ROYAL: I object, your Honor. This is irrelevant  
9 as to the change in name of the task force. It has nothing to  
10 do with the issues in this case.

11 THE COURT: Overruled.

12 MS. SMITH: Thank you.

13 BY MS. SMITH:

14 Q You may continue your answer.

15 A So in the middle of last year, we also began to  
16 investigate labor trafficking and so we changed the name of the  
17 task force.

18 Q Just generally speaking what makes something a task force  
19 as opposed to a federal agency?

20 A So multiple different task forces throughout the FBI and  
21 other law enforcement agencies. For ours particularly, it's  
22 made up of both federal partners -- and those include FBI, as  
23 well as HSI and IRS -- and then we have state partners such as  
24 the Michigan State Police, Michigan Department of Corrections,  
25 and then local departments as well, which would include cities

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1 such as Detroit, Romulus, and others.

2 Q Is one of your duties to act as a case agent on a  
3 particular investigation?

4 A Yes.

5 Q What does that mean?

6 A So the case agent is the primary investigating agent for a  
7 case. That would be the person who manages the case generally  
8 from start to finish, though sometimes we do take cases that  
9 are passed to us from other case agents.

10 Q Approximately how many child pornography investigations  
11 have you been involved in since 2012?

12 A An estimate would be more than 100.

13 Q And for that number, how many were you the case agent on?

14 A I maintain a caseload of approximately 40 child  
15 pornography investigations. Over two years, I would estimate  
16 that to be between 50 and 60 where I was the case agent.

17 Q Were you the case agent involved in the investigation of  
18 an individual by the name of Tommy Lee Jones?

19 A Yes.

20 Q And what was the nature of that investigation?

21 A The nature of that investigation was an on-line  
22 peer-to-peer child pornography trafficking case.

23 Q Do you see Tommy Lee Jones here in the courtroom today?

24 A Yes.

25 Q Could you point him out and identify an article of

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1 clothing he's wearing?

2 **A** He's sitting at counsel table. Looks like he has on a  
3 black sweater over top of a gray shirt.

4 **MS. SMITH:** May the record reflect that the witness  
5 has identified the Defendant?

6 **THE COURT:** Yes, the record may.

7 **BY MS. SMITH:**

8 **Q** Special Agent Nichols, how old is the Defendant?

9 **A** Forty-six.

10 **Q** I'm going to turn your attention to your undercover  
11 investigation. On or around October 18th and 19th, 2015, what  
12 was the general nature of that investigation?

13 **A** So if I could back up a little bit. One of my other  
14 duties as a case agent is I run an undercover operation that  
15 targets individuals who are trafficking in child pornography or  
16 producing child pornography or who are trying to travel to meet  
17 a child for sexual acts.

18 **Q** Are you familiar with the legal definition of child  
19 pornography?

20 **A** Yes.

21 **Q** And what does that mean?

22 **A** Generally, that means lascivious display of the genitalia  
23 or a child engaged in a sex act, and for that statute, my  
24 understanding, is that an individual who has not yet attained  
25 the age of 18 when those videos or images were created.

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1 Q Would that include prepubescent children?

2 A Yes.

3 Q Would that include children who maybe have reached puberty  
4 but still are not 18 years old?

5 A Yes.

6 Q How did this particular investigation begin?

7 A It began on October 18th when I was working on an  
8 undercover capacity in one of those peer-to-peer file sharing  
9 networks.

10 Q Can you explain to the jury what is a peer-to-peer file  
11 sharing network?

12 A Probably the easiest description I can give it, it's a  
13 group of computers that are connected through the Internet.  
14 They have a common goal. That goal is to share files and those  
15 files can range from video files, picture files, music or, in  
16 this case, child pornography.

17 Q And how are peer-to-peer file sharing programs related to  
18 child pornography investigations?

19 A Peer-to-peer, unfortunately, is one of the common ways  
20 that we see that individuals trade child pornography.

21 Q Is there more than one type of peer-to-peer file sharing  
22 program available on the Internet?

23 A Absolutely.

24 Q Can you name some of the common programs that you see?

25 A So probably the common programs would be an application

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1 called Bit Torrent. There's an application called Gigatribe.  
2 There's one called Frost Wire, and then the reason we're here  
3 today, one called Ares.

4 Q Is that A-r-e-s?

5 A Yes, ma'am.

6 Q How does an individual go about getting a peer-to-peer  
7 file sharing program?

8 A So first they have to know about the program. That can be  
9 word of mouth. They can search it on the Internet. Once  
10 they've decided on a program they want, they have to download  
11 that program. Once it's downloaded, they then have to install  
12 it and set it up. Once it's set up, they can begin searching  
13 and sharing files.

14 Q You have an exhibit book in front of you. I ask you to  
15 take it and turn in your book to Government's Proposed Exhibit  
16 7. It consists of 25 pages. When you're finished looking  
17 through that, just look up at me and I'll ask the next  
18 question.

19 Do you recognize those pages?

20 A I do.

21 Q What are they?

22 A This is a demonstration that I put together demonstrating  
23 on how to download, set up and then search and download files  
24 with the Ares program.

25 MS. SMITH: Your Honor, at this time I move to admit

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1 Government's Exhibit 7.

2 **MR. ROYAL:** The Defense --

3 **THE COURT:** Any objection?

4 **MR. ROYAL:** The Defense objects to this exhibit.

5 This exhibit is dated March 9, 2016, some five months after the  
6 parameters that this case as set forth in the indictment. The  
7 indictment charges crimes which took place between September  
8 16th, 2015 and October 23rd, 2015. This is well after that.  
9 There's no claim that my client had anything to do with this  
10 exhibit and I think it's irrelevant.

11 **THE COURT:** Is it the Government's position that this  
12 exhibit either represents propensity or probability that's  
13 related to the relevant crime?

14 **MS. SMITH:** It is relevant, your Honor, because it's  
15 a demonstrative exhibit that explains how the Ares peer-to-peer  
16 file sharing system is set up, and it will help assist the jury  
17 in understanding how this program works and how the files come  
18 in and go out of the program.

19 **THE COURT:** Very well. I understand the Defense's  
20 objection but I overrule it.

21 **MS. SMITH:** Thank you. At this time, your Honor, I  
22 would like to publish these slides to the jury and go through  
23 them one at a time, if I may?

24 **THE COURT:** You may.

25

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1 **BY MS. SMITH:**

2 **Q** Okay. Let's look at the first page. What is the jury  
3 looking at -- can you see it on your screen, by the way?

4 **A** I can see it on my screen actually.

5 **Q** What are they looking at here?

6 **A** So what they're being looking at here is the home page for  
7 the Ares program and that home page is displayed at the top.  
8 It's Aresgalaxy.io.

9 **Q** And is that found on the Internet?

10 **A** Yes, ma'am.

11 **Q** Okay. Let's look at the next one. What are we looking at  
12 here?

13 **A** So at this point, I am downloading the Ares software and I  
14 did that by clicking the green box that was on the previous  
15 slide.

16 **Q** Okay. And is the program now downloading?

17 **A** It is.

18 **Q** And you took a screen shot of the program downloading?

19 **A** Yes. You can see it in the gray there. It says,  
20 "download of Ares Galaxy will start in zero seconds." So it's  
21 just getting ready to start.

22 **Q** Okay. Next page.

23 What is this?

24 **A** This slide shows the download is completed and what you  
25 see here is the installer for that program. So this is the

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1 piece of software that installs Ares.

2 Q Is this screen shot from what would appear in your  
3 Internet Explorer if you were to open up the files to look at  
4 what's in your computer?

5 A Yes. This is in Windows Explorer.

6 Q Excuse me. Thank you for correcting me.

7 Okay. Next page?

8 A What this slide is demonstrating is I've now double  
9 clicked the installer and this is the first screen that pops  
10 up.

11 Q Is that the license agreement for software program?

12 A It is a license agreement and it's a waiver essentially  
13 telling you not to do illegal things with the software.

14 Q Next screen.

15 And what are we looking at here?

16 A So as we go through these what I'm doing is I'm taking the  
17 default settings. I'm not changing anything about the software  
18 the way it's packaged, and I'm just clicking next to install  
19 the program. So this is the second screen in the install  
20 process.

21 Q And if we look in the middle, there is a box that is  
22 entitled desktop shortcut. What does that mean?

23 A That means for this particular installation, it's going to  
24 put a shortcut on my desktop for the software.

25 Q And what would that shortcut do?

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1     **A**     It would make it easier to launch the program. So the  
2     shortcut would appear on the user's desktop. They could double  
3     click that to launch the program.

4     **Q**     Okay. Next screen.

5             What is this here?

6     **A**     This is the screen where it asks where we would like to  
7     install the software, and again, I checked the default  
8     settings. So it's placing it into the program files under the  
9     directory Ares.

10    **Q**     Okay. Next screen.

11    **A**     At this point, it's showing that the installation is  
12    complete.

13    **Q**     Okay. Let's go to the next screen.

14             What does this show?

15    **A**     So on the previous one, there was a box you could click  
16    that says "show details." And so this is now -- I clicked that  
17    box and it's showing me the details of the install.

18    **Q**     Okay. Next screen.

19             What are we looking at here?

20    **A**     So again, we've installed this software -- I installed  
21    this software and then I double clicked the shortcut that was  
22    on the top and this is the first screen that I saw.

23    **Q**     And what folder did you see when you went into the  
24    library?

25    **A**     So the first thing I see is that tab that says "library"

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1 and under that it says "shared folders."

2 Q So the words that are across the top "library, screen,  
3 search, transfer, chat and control panel," are those each tabs  
4 in the program that you can click over to?

5 A Yes.

6 Q Can we go back out just a second. At the top it says  
7 "Ares 2.2.4.3048." Can you explain what that means to the  
8 jury?

9 A That number is representative of this software version for  
10 this particular Ares install, and I chose this version because  
11 it's the same version of the software that I was able to  
12 download child pornography from on October 18th of last year.

13 Q Next screen. All right.

14 What are we looking at here?

15 A So this is a tab titled "screen." From in here, you can  
16 watch some TV. You can listen to Internet radio, and then if  
17 you were to want to view media that you had downloaded or that  
18 was in your shared library, it would also be displayed in this  
19 window.

20 Q When you say media, what do you mean?

21 A For purposes when I say media, I'm talking about music  
22 videos or pictures.

23 Q Okay. Next screen.

24 What are we seeing here?

25 A So what I attempted to do was click on the search tab and

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1 it popped up a box that said, "Would you like to choose your  
2 nickname now?"

3 Q Okay. And for this particular demonstration, did you  
4 select a nickname?

5 A I did not.

6 Q And in your training and experience, do people choose  
7 nicknames or do they allow the computer to choose them for  
8 them?

9 A In child pornography investigations, I rarely see anyone  
10 with a chosen nickname.

11 Q What happens if you select no?

12 A Ares will generate a nickname and it will show up as the  
13 letters A-N-O-N for anonymous and then a random string of  
14 numbers.

15 Q Okay. Next screen.

16 What are we seeing here?

17 A So again, I've now told that thing that I don't want to  
18 take a nickname and I'm in the search tab, and this is where a  
19 user would search for media.

20 Q Okay. So that empty box that's kind of a third of way  
21 down, what goes in there?

22 A Those would be search terms.

23 Q So an individual can type in a term and then what do they  
24 do?

25 A They type in the term and they click the box that says

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1 "search now."

2 Q And can the user select the type of files that they want  
3 to download?

4 A Certainly.

5 Q And so it is all of those categories almost like a menu of  
6 the different types of files, audio, video, image, documents,  
7 software or other?

8 A Yes, ma'am.

9 Q So if one selects all, will the peer-to-peer search for  
10 all those files type?

11 A Yes. It will search for anything essentially that's on  
12 the Ares network if you select all.

13 Q In terms of selecting a search term, how does one go about  
14 selecting which term to use to get the best results?

15 A Again, it depends on what the user is looking for. I know  
16 in your opening statement you mentioned the word "Corvette."  
17 So if one were to use the word "Corvette" to do a search, it  
18 would be a very broad search, because there are all different  
19 kinds of Corvettes. There's red Corvettes. There's '70s  
20 Corvettes, 2016 Corvettes, Stingrays. So you're going to get a  
21 much larger and maybe not as refined search result if you use a  
22 very broad term. If you use a very particular term, like red,  
23 2016 Corvette Stingray, chances are better that you're going to  
24 get exactly what you're looking for if you're looking for a red  
25 2016 Corvette Stingray.

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1 Q Okay. Next slide, please.

2 And is this the transfer tab?

3 A Yes.

4 Q So what are we seeing here?

5 A So this is the tab that essentially displays information  
6 on whether you are downloading files or whether you are  
7 uploading files.

8 Q Okay. Next tab.

9 Is this the chat tab?

10 A Yes.

11 Q What are we looking at here?

12 A So you're looking at the chat tab, and this is one of the  
13 ways that a user on the Ares network can communicate. There  
14 are multiple chat rooms, and it works like any other chat. You  
15 would click on one of those room names, enter in there and you  
16 could begin to see that are other people are chatting. You'll  
17 see what they typed. If you're chatting, they see what you  
18 typed.

19 Q Are there other ways to chat on the Ares network?

20 A Other ways to communicate?

21 Q Yes, other ways to communicate?

22 A Yes, ma'am.

23 Q How would that be?

24 A For example, you could place files in your shared folder  
25 and that would communicate to other users on the network that

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1 you have files available for download.

2 Q Next screen.

3 This is the control panel tab?

4 A Yes.

5 Q And what are we looking at here?

6 A This is where you can change the multiple different  
7 settings for the Ares network.

8 Q And are these the defaults that are checked?

9 A Yes. I did not change anything in this from default.

10 Q So the default position of the Ares is that it loads when  
11 you start Windows?

12 A Yes.

13 Q And it auto connects to the network when you start up  
14 Ares?

15 A Yes.

16 Q What does that mean?

17 A So if you were to uncheck that box, you could open up  
18 Ares. It would not connect to the Internet -- to the Ares  
19 network, and you would be able to view files you downloaded or  
20 files that were in your shared folder.

21 Q If you are connected to the Ares network, does it allow  
22 the trading of files even if you're not sitting behind the  
23 computer?

24 A Yes.

25 Q Okay. Next screen.

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1           This looks like another part of the control panel. What  
2 are we looking at here?

3   **A**     This is the tab where you can set up -- it's called the  
4 transfer tab, and this is where you can set limits on the  
5 amount of files that are allowed to be downloaded from you and  
6 the files that you can download.

7   **Q**     And these are the default settings?

8   **A**     Yes.

9   **Q**     And so the default setting is "six uploads allowed at  
10 once." What does that mean?

11   **A**     That means at any one given time, this piece of software  
12 will only allow six files to be downloaded from this computer  
13 at one time.

14   **Q**     And three uploads per user. What does that mean?

15   **A**     So in addition to that six -- so there can only be six  
16 uploads. So only six files can be downloaded at once. This is  
17 saying each user can only download a max of three files at  
18 once.

19   **Q**     And then "ten downloads allowed at once." What does that  
20 mean?

21   **A**     That is a number that indicates that for this particular  
22 software, if I was using it, I could download 10 files at once,  
23 but if I tried to download number 11, it would go into a queue  
24 and it would wait until one of my other downloads finished.

25   **Q**     Now, down towards the bottom, there's entitled "downloads

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1 are saved into folder," and it looks like there's a file path,  
2 C/users/testuser/desktop/my shared folder. What part of that  
3 is the default?

4 **A** So the default is going to be -- I guess maybe I should  
5 explain how this works for Windows. The C drive is generally  
6 your main hard drive in a computer. It's where the operating  
7 system generally resides as long as nothing has been changed.  
8 Users is the folder that contains information for all the users  
9 of that computer. In this case, test user is the user file or  
10 folder for the user I created for this demonstration. Desktop  
11 is that user's desktop and then my shared folder indicates the  
12 name of the Ares share folder.

13 **Q** Is that the default folder for the downloaded files to go  
14 into?

15 **A** Yes.

16 **Q** And is "my shared folder" a folder that other people on  
17 the network have the ability to go into and take files out of?

18 **A** Yes.

19 **Q** Okay. Next page.

20 So we're back to the search bar. Did you perform a search  
21 to show how a file is brought into the peer-to-peer network?

22 **A** I did.

23 **Q** What did you search for in this demonstration?

24 **A** I searched for a very broad term.

25 **Q** Okay. Next page.

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1 What's going on in this screen shot?

2 **A** So at this point, I typed the word "pie" into the search  
3 box. I clicked the search now button, and to the right, you  
4 see the words "performing search, please wait" followed by a  
5 bunch of dots. That's indicating that the software is now  
6 searching other users on the network for files that contain the  
7 term "pie."

8 **Q** Okay. Next screen.

9 What are we seeing here?

10 **A** So at this point, I'm starting to see results of my  
11 search.

12 **Q** And what types of results did the word "pie" return for  
13 you?

14 **A** So in there, I have audio, I have video, and as we scroll  
15 down through this, there are pictures as well.

16 **Q** Okay. It looks like there's audio file called American  
17 Pie. Are there some foreign titles in here as well?

18 **A** There are.

19 **Q** And is that because the peer-to-peer file sharing program  
20 goes across the world?

21 **A** Yes.

22 **Q** Okay. Let's look at the next screen.

23 Is this the second part of the return of the titles from  
24 the search?

25 **A** Yes. And I apologize for this, I actually scrolled down

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1 to try and find a file that was suitable for court.

2 Q Okay. All right. So are these all the files that are  
3 available for the user then to download should they so choose?

4 A Yes.

5 Q All right. Let's look at the next screen.

6 And did you in fact choose to download one of these files?

7 A I did.

8 Q And which one is that?

9 A It's the one titled "zucchini pie." It's highlighted in  
10 blue.

11 Q And is it -- what type of file is it?

12 A It's a video -- or a picture file.

13 Q And does the -- there's a screen name of t-a-t-a at Ares.  
14 Is that the individual that you were pulling the file from?

15 A That's at least one of the individuals I pulled the file  
16 from, yes.

17 Q Okay. Let's go to the next screen.

18 What are we seeing here?

19 A This is the transfer tab we talked about before, and all  
20 I'm doing is taking a screen shot of what's going on while that  
21 file is downloading.

22 Q So the user can go and watch the progress of the files as  
23 they download?

24 A Yes, both for downloads and uploads.

25 Q Okay. Next page.

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1 What do we see here?

2 A We see a green bar that indicates the file was downloaded.

3 Q All right. Next screen.

4 What's that?

5 A That's -- unfortunately, that's zucchini pie.

6 Q That's the picture you were able to download?

7 A Yes, ma'am.

8 Q All right. Let's go to the last screen in this series.

9 What are we looking at here?

10 A So what I did here is I went to the Windows Explorer and I  
11 navigated to the my shared folder that we saw in the default  
12 directory created by Ares, and this is a screen shot of that  
13 folder with the only file I have in it, which is the file I  
14 downloaded, the zucchini pie.

15 Q Okay. I'm going to direct your attention to your  
16 undercover Ares peer-to-peer program. Is your Ares program  
17 different than the commercially available program?

18 A Yes. We have a specific version that's written for law  
19 enforcement purposes.

20 Q And how is it different?

21 A So it's different in a couple of ways. One of those ways  
22 is that it takes screen shots of the activity. So as we're  
23 downloading files from people, you take the screen shots. It  
24 keeps a log of the activity we do while we're doing those  
25 downloads, and the most important thing that it does is it

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1 ensures that we only download from one specific user.

2 Q Can you explain how you -- what is that called?

3 A It's called a single source download.

4 Q Is there such a thing as a multiple source download?

5 A Yes.

6 Q What does that mean?

7 A So for peer-to-peer programs, the way it works is, for  
8 example, the zucchini pie. It showed initially I was  
9 downloading it from tata@ares. That may be the initial person  
10 but peer-to-peer networks are set up in such a way so that the  
11 individual downloading the file is getting it from multiple  
12 different people, and that's for a couple reasons. It's to  
13 speed things up and it's also to allow for anonymous access.

14 Q But your peer-to-peer program does not do a multisource  
15 download; is that right?

16 A That's correct.

17 Q How is the single source download then used for law  
18 enforcement purposes?

19 A So the reason we do a single source download is I need to  
20 know at least what IP address that file came from.

21 Q In your undercover work, do you ever send child  
22 pornography out to others?

23 A No. It's against FBI policy.

24 Q Directing your attention to October 18th and 19th of 2015.  
25 Were you using this law enforcement file sharing Ares program

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1 on that day?

2 **A** Yes.

3 **Q** What were you looking for?

4 **A** I was looking for individuals sharing files of interest on  
5 the Internet.

6 **Q** When you say files of interest, what do you mean?

7 **A** Any files that appear to be related to child pornography.

8 **Q** And how would you know if the file is related to child  
9 pornography?

10 **A** There's a couple of ways. Those two are hash values, as  
11 well as file names, which would include search terms  
12 essentially.

13 **Q** Let's go back to what a hash value means. Can you explain  
14 that in some more less technical term?

15 **A** Yes. So a hash value is essentially the equivalent of an  
16 electronic DNA for a file. So a file that we have here today,  
17 if we were to send it across the Internet and it's still the  
18 same file and nothing changed, the hash values would not change  
19 either. Now, if we change one dot on that image, that would  
20 change the hash values.

21 **Q** How are the hash values used for child pornography  
22 investigations?

23 **A** We maintain a list, a database, if you will, of known hash  
24 values of child pornography. So not the images or the videos  
25 for those but the hash values that other investigators have

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1 seen.

2 Q You also mentioned file names or terms. In your training  
3 and experience, are there certain terminology that you see in  
4 child pornography files?

5 A Yes.

6 Q And can you give the jury some examples of those?

7 A So examples of those would be terms such as pthc, pedo,  
8 Lolita, Baby Jay, Vicki, Ray Gold, and variants of Ray Gold.  
9 We could continue for a long time on that.

10 Q What does pthc means?

11 A It means preteen hard core.

12 Q Is incest another key term that's used in child  
13 pornography files?

14 A Yes.

15 Q When you use terms of people like Vicki, what do you mean  
16 by that?

17 A So unfortunately, Vicki is associated with a known series  
18 of child pornography. It depicts a little girl who is an  
19 identified victim.

20 Q And so when a file is entitled Vicki, does that mean that  
21 that particular child is in that video?

22 A No.

23 Q Why would somebody name the file Vicki if that particular  
24 child is not in the file?

25 A So again, from my training and experience, there's some

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1 artwork that goes into naming these files, and it appears that  
2 that's done to generate more downloads essentially. So if one  
3 were to place Vicki in the title and another individual were  
4 familiar with that series, they may be prompted to download it.

5 Q And so is it -- is it fair to say that the more well-known  
6 term that's used, the more traffic one can generate?

7 A It's possible, yes.

8 Q In your training and experience, do people pay for their  
9 child pornography?

10 A Not with money.

11 Q When you say not with money, what do you mean?

12 A Well, I mean the currency for child pornography are more  
13 child pornography. There's a common term, it's called give to  
14 get, wherein if you don't provide child pornography to an  
15 individual, they won't provide it to you.

16 Q Now, were you able to find a computer of interest on  
17 October 18th, 2015?

18 A Yes.

19 Q And what made it of interest to you?

20 A It had 24 files that were either identified by a hash  
21 value or the names of the files were consistent with names we  
22 see in child pornography investigations.

23 Q And how did you identify this computer?

24 A This is through the Ares peer-to-peer network.

25 Q Were you able to identify an IP address?

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1 A Yes.

2 Q Can you explain to the jury what is an IP address?

3 A Probably the best way to explain an IP address is it's the  
4 equivalent of the computer version of a telephone number. If  
5 you and I were to make a phone call to each other, you would  
6 call my number and then we could begin this conversation, this  
7 exchange of data. For a computer, you're going to use the IP  
8 address to initiate a very similar conversation, which is an  
9 exchange of data.

10 Q Do you recall the IP address from this undercover  
11 investigation?

12 A Yes.

13 Q Okay. What was it?

14 A I believe it's 69.14.117.120.

15 Q All right. I'm going to have you look in the exhibit book  
16 at Exhibit 1. It is enumerated 1. There's Exhibit 1 -- let me  
17 look here before I speak -- and then there's A through I. Do  
18 you have a disk in Exhibit 1, in yours?

19 A I do.

20 Q When you look through Exhibits A through I and you finish,  
21 look up at me and I'll ask you a few questions.

22 THE COURT: What are you asking Agent Nichols to do,  
23 to read them all?

24 MS. SMITH: No.

25 THE COURT: Or just to notice them?

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1                   **MS. SMITH:** Just to look through them, correct.

2                   **BY MS. SMITH:**

3                   **Q** Let's start with Exhibit 1? What is Exhibit 1.

4                   **A** Exhibit 1 is a DVD, and it contains a copy of what we  
5 would call an undercover session, and this is the undercover  
6 session with the IP address 69.14.117.120.

7                   **Q** Did you create that disk?

8                   **A** Yes, I did.

9                   **Q** Do you have your initials on that disk?

10                  **A** Yes.

11                  **Q** Have you reviewed that disk and put your initials on  
12 there?

13                  **A** I have.

14                  **Q** And how about Exhibits 1A through 1I, what's in those  
15 exhibits?

16                  **A** So A through I contain screen captures of files as they  
17 were attempted to be downloaded, along with the results of  
18 those attempted downloads.

19                  **Q** Do those screen shots come from the disk that is in  
20 Exhibit 1?

21                  **A** Yes.

22                   **MS. SMITH:** At this time, your Honor, I would move to  
23 admit Exhibit 1, including 1A through 1I?

24                   **MR. ROYAL:** I have no objection.

25                   **THE COURT:** Any objection?

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1           **MR. ROYAL:** No, your Honor.

2           **THE COURT:** Thank you. They're received.

3           **MS. SMITH:** I'm going to start publishing these.

4 These are screen shot exhibits. If I may start publishing them  
5 to explain them to the jury.

6           **THE COURT:** You may.

7           **MS. SMITH:** Thank you.

8 **BY MS. SMITH:**

9 **Q** Okay. Let's look at 1A. What is the jury seeing in 1A?

10 **A** So in 1A, as you can see you from the top left corner  
11 where it says "LE," that stands for law enforcement. That's  
12 the version of our law enforcement tool that I'm using and this  
13 is showing downloads from that IP address we referenced.

14 **Q** Okay. What is the title of the file you're downloading?

15 **A** So I would butcher this name if I try to say it. It  
16 appears foreign. I do know what sdpa stands for.

17 **Q** What does sdpa stand for?

18 **A** It's essentially Spanish for preteen hard core.

19 **Q** And just for the record, does it say -- I'll give it a  
20 try -- chiquilla violada, with (2)(2).mpg?

21 **A** Yes.

22 **Q** What does mpg mean?

23 **A** That is a video file, mpeg.

24 **Q** How about this string of numbers that begins with five,  
25 it's numbers and letters and ends with the letter G. What is

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1 that?

2 **A** That's representative of the hash value for that file.

3 **Q** And is this one of the files that you attempted to  
4 download from that IP address you just testified to?

5 **A** Yes.

6 **Q** All right. Let's go back out a little bit.

7 What is the status here?

8 **A** The status shows downloading. So it's showing that at  
9 this point in time when the screen shot was taken, this file  
10 was being download from the IP address.

11 **Q** And what does this mean under the user?

12 **A** So this is showing me that I'm downloading it from one  
13 user, as indicated by the one user, and then it has the user  
14 name and the IP address for that user.

15 **Q** What's the user name?

16 **A** It's anon\_450E7578@Ares.

17 **Q** Okay. Let's look at the second page of this exhibit.

18 What are we seeing here? Is this a continuation of the  
19 download?

20 **A** Yes, it is.

21 **Q** And on the last page, what are we looking at here?

22 **A** This is a log showing that for this particular file, I was  
23 not able to download the complete file.

24 **Q** Were you able to download part of this file?

25 **A** Yes.

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1 Q And were you able to view this file?

2 A Yes. So for video files when they're downloaded, as the  
3 way the software works, even if it's a partial download,  
4 oftentimes I can actually view the file.

5 Q Now, on the first screen shot, there's a date and time in  
6 the bottom right-hand corner. It says 2015 October 18,  
7 22:48:12. Can you explain to the jury what that time means?

8 A Yes. So the day I think is pretty self-explanatory. It's  
9 saying October 18th, 2015. The time is expressed in a 24-hour  
10 clock, and that time is actually in what we refer to as UTC  
11 time.

12 Q What does UTC time mean?

13 A It stands for a Coordinated Universal Time, and that is  
14 widely accepted in the realm of computers, forensics and  
15 science as a standard time, and then from that time, we do  
16 offsets to determine the time zone that an individual is in.

17 Q So 22:48:12 is the universal time clock?

18 A Yes.

19 Q And so how do we determine what time of day it is in the  
20 Eastern District of Michigan from that time?

21 A So there's a chart that's widely available that tells you  
22 how to do it. I can tell you that for this particular time of  
23 the year, we would subtract four hours from UTC time.

24 Q Okay. And I think you answered this question before, but  
25 in order to send files out, does a person need to be sitting

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1 behind the computer?

2 **A** No. As long as there are files in the share folder and  
3 the Ares program is connected to the Internet, individuals can  
4 download from it.

5 **Q** Okay. Let's look at 1B. We'll go through these a little  
6 bit faster now we're familiar with what we're looking at. Is  
7 this the second download you attempted?

8 **A** Yes, it is.

9 **Q** And what is the file name for this one?

10 **A** It is dc13(2)(2).mpg.

11 **Q** And did that file name draw your attention?

12 **A** No.

13 **Q** What about the series of letters and numbers beneath that,  
14 what is that?

15 **A** That's the hash value.

16 **Q** And did that draw your attention?

17 **A** Yes. This file was a candidate for download based on the  
18 hash value.

19 **Q** Okay. Let's go to the last. Does this show the end of  
20 the file, what happened with this file?

21 **A** Once again, it timed out. So this was only a partial  
22 download.

23 **Q** But were you still able to view the video?

24 **A** Yes.

25 **Q** So just to be clear, when we say a partial download, does

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1 that mean that the entire file could have been maybe an hour  
2 and you were only able to get the first 15 or 20 minutes of it?

3 A That's a very accurate description.

4 Q Exhibit C, how about this? Was this another one you were  
5 able to attempt download from that IP address?

6 A Yes.

7 Q Okay. How many total files did you attempt to download  
8 between October 18th and 19th, 2015?

9 A It was nine files.

10 Q How many were completed?

11 A Three.

12 Q And how many were incomplete?

13 A Six.

14 Q What's the title of this one?

15 A This one is (2)(2)(2)96.mpg.

16 Q Is that the hash value down below?

17 A Yes.

18 Q And let's go to Exhibit D -- I'm sorry, the last page on  
19 C, does this show an incomplete file as well?

20 A Yes, it does.

21 Q All right. Exhibit D, 1D, what's the title on this file?

22 A So it is (pthc)papafickt und spritz 9yr tochter 4 41 mi.

23 Q You testified before about pthc. What about the term 9yr,  
24 is that significant to your investigation?

25 A Yes.

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1 Q Why is that?

2 A So we also see in those search terms or file descriptions  
3 a number followed by the letter y-r or y-o, and that's usually  
4 indicative of the age of the child depicted in the video or the  
5 picture.

6 Q Okay. The last page on this, and what does this show as  
7 to the completeness of this file?

8 A This one timed out as well.

9 Q Okay. 1E, what's the title of this?

10 A Adultpthchussyfankingpasscp03.mpeg.

11 Q What about the term "hussyfan," did that draw your  
12 attention?

13 A Yes. Hussyfan is another one of those words that started  
14 as a known series and is now used for child pornography, no  
15 matter the series.

16 Q What about the word "kingpass?"

17 A Kingpass is another one that's very similar to hussyfan,  
18 wherein there was a series and now it's used to describe all  
19 different types of child porn.

20 Q How about the initials cp?

21 A Child pornography.

22 Q Okay. Let's go to the last page of this. What does this  
23 show?

24 A So this shows that for this particular file I was able to  
25 download the entire file.

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1 Q All right. Exhibit 1F what's the title of this one?

2 A Kairi.avi.

3 Q Can you spell that?

4 A K-a-i-r-i dot a-v-i.

5 Q Again the hash value is shown underneath there?

6 A Yes.

7 Q Let's go to the last page on that. What does the last  
8 page show?

9 A So this shows that this file timed out. It was actually  
10 attempted to be downloaded twice.

11 Q By you?

12 A Yes.

13 Q Okay. All right. Let's go to 1G. And what's the title  
14 of this one?

15 A FLgirlGloriaandunclehardfucking.FLB.

16 Q And what does FLB mean?

17 A That is a type of container for a video file. So it  
18 indicates it's a video.

19 Q Let's go to the last page of Exhibit G. What was the  
20 status on that?

21 A Again, this one timed out.

22 Q Do you know why some of these files timed out on you?

23 A Again, this is -- there's multiple reasons for that. One  
24 of the reasons could be that the user logged out of Ares. One  
25 other reason could be that, again, we're doing single source

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1 downloads. So it could just be that there was an error in the  
2 transmission or it -- you know, it could mean that the user  
3 took that file out of their share folder and put it somewhere  
4 else. There's a lot of different reasons for that.

5 Q 1H, please what is the title on this one?

6 A Goldberg nuba tribe - africa tribe pthc girl.avi.

7 Q Okay. And we'll go ahead and skip to the last page on  
8 this exhibit. Were you able to complete this download?

9 A Yes.

10 Q Okay. And let's look at Exhibit I. This is the last one.  
11 What's the title?

12 A So again, I'll read the title. Those three dots at the  
13 end of it indicate that that's not showing the whole title and  
14 that's just because of column width of the software. So it  
15 says: 03 pthc r @y gold 12yr daughter and dad 30 mi.

16 Q Now, this word Ray is spelled R with an at symbol and Y.  
17 Is this of significance to you?

18 A It's just another one of the ways that Ray Gold, which is  
19 a series, is spelled out.

20 Q Let's look at Exhibit -- can you look in your book at  
21 Exhibit 2?

22 A Yes, I have 2.

23 Q What is that?

24 A So this is a spreadsheet that gives a description of the  
25 file names that I downloaded, whether it was complete, the

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1 length of the video and then some other information.

2 Q Is it a summary of the downloads that we just viewed?

3 A That's exactly what it is, yes.

4 MS. SMITH: Your Honor, I move to admit Government's  
5 Exhibit 2.

6 THE COURT: Any objection?

7 MR. ROYAL: No objection, your Honor.

8 THE COURT: It's admitted as Government 2.

9 MS. SMITH: Thank you. May I publish it to the jury?

10 THE COURT: You may.

11 BY MS. SMITH:

12 Q Okay. Now, the jury has seen these titles before because  
13 we just went through all of those screen shots. Does it show  
14 the length of the videos you were able to download?

15 A Yes.

16 Q And what's the general length of these videos?

17 A I mean it varies. Some of them are only 20 seconds and it  
18 looks like the longest one there is 30 minutes and 14 seconds.

19 Q Have you reviewed the videos from this summary chart?

20 A Yes.

21 Q And what do these videos depict?

22 A In my opinion, they meet the federal definition of child  
23 pornography.

24 Q Do they show children?

25 A They do.

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1 Q And are these children prepubescent children?

2 A Some of them.

3 Q Are there some who appear to be children but may be post  
4 pubescent?

5 A Yes.

6 Q And what makes them -- when you viewed these videos, what  
7 made them appear to be children to you?

8 A So the things that stand out to me are for females,  
9 particularly, is lack of breast development. For both males  
10 and females, it's lack of body hair. Oftentimes, as you look  
11 at these files over and over again, you start to notice facial  
12 features, and I can't describe it but they just look young.  
13 One of the other things is when you compare these individuals  
14 that appear to be children to the adults that are in the video,  
15 they're significantly smaller in stature.

16 Q And in some of these videos, is there sound?

17 A Yes.

18 Q And in some of the videos with sound, is the sound in a  
19 foreign language?

20 A Yes.

21 Q And in some of the videos is there English as well?

22 A There is.

23 Q All right. I'm going to have you look at Exhibit 3. That  
24 should be a disk. Do you see that disk?

25 A I do.

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1 Q What is that disk of?

2 A That is a disk of the videos that I was able to download  
3 from Ares.

4 Q Does that contain the videos that were in the summary  
5 chart we just looked at?

6 A Yes.

7 Q Are your initials on that disk?

8 A They are.

9 Q Did you review that disk in its entirety?

10 A Yes.

11 Q Let's look at, if you could please turn to Exhibits D and  
12 E -- C, D and E I think I want you to look at. C, D and E,  
13 what are those?

14 A So these are still captures or screen shots of some of  
15 those videos that I downloaded.

16 Q And for the record, Exhibit 3A and 3B, are those clips  
17 from the videos that are in the disk in Exhibit 3?

18 A Yes.

19 MS. SMITH: Your Honor, at this time I move to admit  
20 Exhibit 3, including 3A, B, C, D, and E.

21 THE COURT: Any objection?

22 MR. ROYAL: No, your Honor.

23 THE COURT: It's received as Exhibit 3A, B, C, D and  
24 E.

25 MS. SMITH: Thank you, your Honor. I would advise

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1 the Court that I have two exhibits to show to the jury that  
2 involve sexually explicit videos. They are both under 30  
3 seconds and I would like permission to play them at this time.

4 **THE COURT:** You may. Have we got -- I guess that's  
5 consistent with what you just said, but about 11:00 we should  
6 take a break.

7 **MS. SMITH:** Very well. Yes, your Honor.

8 **BY MS. SMITH:**

9 **Q** Special Agent Nichols, are some of the videos that you saw  
10 called -- would be referred to as a montage?

11 **A** Yes.

12 **Q** And what does a montage mean?

13 **A** That would be a video that has other video clips from  
14 other different videos. So it's a mixture. It's almost like  
15 if you took the series back to the future and mingled one, two,  
16 three and four altogether and produced a single video.

17 **Q** And so in some these videos that are maybe 30 minutes  
18 long, is it the same person all 30 minutes or is it a  
19 compilation of many different clips of movies together?

20 **A** Some of them are a compilation of many different clips  
21 altogether.

22 **Q** Okay. I want to direct you to what we're going to show,  
23 Exhibit 3A. The title -- it's from the video  
24 adult pthc hussyfan kingpass cp 03. Did you review the clip  
25 that we are going to play?

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1     **A**     Yes, I did.

2     **Q**     And does it depict who appear to be children engaged in  
3     sex acts with adults?

4     **A**     Yes.

5                 **MS. SMITH:**   Okay.   We're going to publish that video  
6     now.

7                         (Video played for the jury 10:51 a.m. until  
8                         10:51 a.m.)

9     **BY MS. SMITH:**

10    **Q**     Okay.   Exhibit 3B that we're getting ready to publish  
11    comes from the Goldberg nuba tribe - africa pthc video.   Did  
12    you review that clip?

13    **A**     I did.

14    **Q**     And what is it the jury a going to see?

15    **A**     They're going to see a female child who is laying in a  
16    bathtub.   Her legs are spread, and in this clip it shows what  
17    appears to be an adult hand spreading open her vaginal area.

18    **Q**     Is this video set to music?

19    **A**     It is.

20                 **MS. SMITH:**   At this time we will publish Exhibit 3B.

21                         (Video played for the jury 10:52 a.m. until  
22                         10:53 a.m.)

23                 **MS. SMITH:**   That's it for now, your Honor.

24                 **THE COURT:**   That's all for now?

25                 **MS. SMITH:**   Did you want to take a break at this

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1 time? This might be a good place to break.

2 **THE COURT:** I think that would be a good idea, and I  
3 thank you for paying attention. Please go to the jury room.  
4 We'll be back here in 15 minutes.

5 (Jury out 10:53 a.m.)

6 **THE COURT:** Anything either the Government or the  
7 Defendant would like the record to reflect at this time?

8 **MS. SMITH:** No, your Honor.

9 **MR. ROYAL:** Not from the Defense, your Honor.

10 **THE COURT:** Okay. Let's make -- 15 would be 10  
11 after. The Defendant can go to lockup, if that's what's  
12 intended, and back in here at 10 after.

13 **MR. ROYAL:** 10 after. Very well. Thank you, your  
14 Honor.

15 **MS. SMITH:** Your Honor, may my witness take a break  
16 as well?

17 **THE COURT:** I'm sorry?

18 **MS. SMITH:** May my witness take a bathroom break as  
19 well?

20 **THE COURT:** Do you want a bathroom break?

21 **THE WITNESS:** If you allow, absolutely.

22 **THE COURT:** Yes, you can. Court's in recess.

23 (Recess taken 10:54 a.m.)

24 **THE CLERK:** Court is reconvened in the case of United  
25 States of America versus Tommy Lee Jones.

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1           **THE COURT:** We're waiting for the Defendant. There  
2 he is. Defendant is at counsel table. Are you ready to  
3 recommence?

4           **MS. SMITH:** Yes, your Honor.

5           **MR. ROYAL:** Yes, your Honor.

6           **THE COURT:** Bring in the jury.

7                       (Jury in 11:11 a.m.)

8           **THE COURT:** Please be seated. Thank you. Thank you  
9 for your attention and for being here, and Ms. Smith, you may  
10 continue.

11           **MS. SMITH:** Thank you, your Honor.

12 **BY MS. SMITH:**

13 **Q** Special Agent Nichols, before we broke, you were  
14 explaining to the jury the completion of the undercover  
15 downloads from a particular IP address. After you completed  
16 and reviewed those downloads, what was the next step in your  
17 investigation?

18 **A** The next step was to determine which Internet service  
19 provider provided access to that IP address.

20 **Q** And are you able to do that?

21 **A** Yes.

22 **Q** And which service provider was linked to that IP address?

23 **A** The company is Wide Open West, and they call themselves  
24 WOW, W-O-W.

25 **Q** What did you do with that information?

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1     **A**     I subpoenaed, by administrative subpoena, Wide Open West  
2     and I requested specifically the subscriber, billing address  
3     and service address for the IP address that I had downloaded  
4     those files from for a particular date and time that these  
5     downloads happened.

6 Q Thank you. I'm going to turn your attention to the  
7 exhibit book. Can you turn to Exhibit 4, which consists of  
8 five pages. Do you recognize that?

9     **A**     Yes.

10 || Q What is that?

11     **A**     That is the subpoena return.  So that's the information  
12     that Wide Open West returned to me in response to the subpoena.

13 Q And on the last page of this exhibit, is there a  
14 certificate of authenticity of business records?

15     **A**     Yes.

16                   **MS. SMITH:** Your Honor, at this time, I would move to  
17 admit Government Exhibit 4.

18                   **MR. ROYAL:** I would like --

19 THE COURT: Any objection?

20                   **MR. ROYAL:** I would like to voir dire, your Honor, on  
21 the admissibility of this exhibit.

22                   **THE COURT:** If it is relevant, you may continue with  
23   voir dire, but I'll stop you if it isn't.

24                   **MR. ROYAL:** I understand, your Honor.

25 (11:14 a.m.)

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**VOIR DIRE EXAMINATION**

**BY MR. ROYAL:**

**Q** Agent Nichols, Page 1 of this exhibit appears to be a different type of document than the other documents. Were they responsive to two different aspects of your subpoena?

**A** No, sir. This entire package is what the cable company sent to me.

**Q** Okay. Page 1 has the IP address that you were inquiring about; is that correct?

**A** Yes.

**Q** It does not have an account number, does it?

**A** Page 1 does not.

**Q** The remaining pages do not have the IP address, do they?

**A** No. They actually have the serial number for the device, which is printed on Page 1.

**Q** The serial number for?

**A** The cable modem, which is printed on Page 1. It's listed as relay agent.

**Q** The serial number -- oh, I see what you're saying. Did you give them the account number or did they give you the account number?

**A** I did not give them an account number.

**MR. ROYAL:** Thank you. I withdraw my objection.

**THE COURT:** It's received as -- which one is it?

**MS. SMITH:** Exhibit 4.

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1                   **THE COURT:** Go ahead.

2                   **DIRECT EXAMINATION, Continuing**

3 **BY MS. SMITH:**

4 **Q** Okay. Let's publish Page 1. Special Agent Nichols, I  
5 think you just testified about this. Is this what Wide Open  
6 West sent you?

7 **A** Yes, that is one of the pages.

8 **Q** And when you -- it has an IP address of 69.14.117.120?

9 **A** Yes.

10 **Q** And what did you say the relay agent was?

11 **A** The relay agent listed there. They call those octets. It  
12 is the serial number of the cable modem device.

13 **Q** And the cable modem device is a piece of equipment; is  
14 that right?

15 **A** Yes, that's the device that the actual cable connection  
16 plugs into on one side, and then it provides Internet access  
17 out the other side.

18 **Q** Okay. And the dates and times that you requested, were  
19 they limited to the dates and times of the downloads of the  
20 undercover session?

21 **A** Yes, they were.

22 **Q** All right. Let's turn to Page 3 in this exhibit. Is this  
23 another document provided by WOW?

24 **A** Yes, it is.

25 **Q** And what does it show here, up in the upper left-hand

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1 corner, who is the account assigned to?

2 A Tommy Jones.

3 Q All right. And if we look -- thank you. If we look in  
4 the middle portion, what does this tell us?

5 A So this gives us the subscriber's name, as well as the  
6 address, gives a couple of different phone numbers, the last  
7 four of the Social Security and a field there that says  
8 "customer comment."

9 Q And it lists an address of 26355 Annapolis Street,  
10 Dearborn Heights, Michigan?

11 A Yes, ma'am.

12 Q It again says "Tommy Jones"?

13 A It does.

14 Q There's a customer type towards the bottom. What does it  
15 say, customer type?

16 A It says "WOW employee."

17 Q Okay. Can we just zoom out to that page, please.

18 At the top third of the page, the top third again, it has  
19 a status active date of is 11-30-09. Do you know what that  
20 means?

21 A Yes. That is the date that service began for that  
22 customer.

23 Q Okay. You can take that down. Thank you.

24 Additionally, as part of your investigation, did you look  
25 into the Defendant's criminal history?

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1 A Yes.

2 Q And were you able to determine whether or not he had a  
3 criminal history?

4 A I was.

5 Q And what did you discover?

6 A I discovered that he was charged with a crime in Ohio  
7 which he later pleaded guilty to.

8 Q I'm going to turn you to Exhibit 16 in your book. Do you  
9 recognize that?

10 A I'm sorry, did you say 16?

11 Q 16, Exhibit 16.

12 A Yes, I do.

13 Q I think there's a couple of documents in there. Just  
14 generally speaking, what are those documents?

15 A These are certified court records from Cleveland, Ohio,  
16 Cuyahoga County clerk.

17 Q Did you obtain those certified court records?

18 A I did not.

19 Q But they were given to you by somebody in your office?

20 A Yes.

21 MS. SMITH: At this time, I move to admit Exhibit 16.  
22 Your Honor.

23 THE COURT: Any objection?

24 MR. ROYAL: My position is on the record already,  
25 your Honor. I maintain that position.

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1           **THE COURT:** It is, yes. Subject to that objection,  
2 they are admitted as Government 15.

3           **MS. SMITH:** 16.

4           **THE COURT:** I said 15, didn't I?

5           **MS. SMITH:** 16, one-six.

6           **THE COURT:** I think you've done both of them, but  
7 I'll settle for 16.

8           **MS. SMITH:** Thank you. Can we publish the first  
9 page, please.

10 **BY MS. SMITH:**

11 **Q** All right. So what is the jury looking at here? Is this  
12 one of the documents that you obtained?

13 **A** Yes.

14 **Q** And is this a charging document?

15 **A** Yes, it appears to be a true bill or an indictment.

16 **Q** Okay. I just want you to read what's towards the bottom  
17 where it says -- it begins "unlawfully," and then there's two  
18 lines of typed text towards the bottom. Do you see where it  
19 begins with "attempted"?

20 **A** Yes.

21 **Q** Okay. What does it say there?

22 **A** "Unlawfully attempted to engage in sexual conduct with  
23 Erica Jones, whose age at the time of the said sexual conduct,  
24 was under 13 years, to wit, DOB 7-6-82."

25 **Q** And what was the date on that?

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1 A The date on this document -- it has a date of offense, is  
2 that what you're looking for?

3 Q Yes, please.

4 A January 11, 1990 to August 23rd, 1990.

5 Q Okay. Let's go to the third page in those documents. Can  
6 you zoom into the text so I can make sure I'm looking at the  
7 right one.

8 Can you read the first sentence please?

9 A "The Defendant herein, having, on a former a day of court,  
10 entered a plea of guilty to gross sexual imposition, RC  
11 2907.05(a)(3) as amended in the indictment, was this day in  
12 open court with his/her counsel present."

13 Q And then does the text continue to say that the  
14 Defendant -- that the Court inquired if the Defendant had  
15 anything to say why judgment should not be pronounced, and  
16 having nothing to say, he had already said and showing no good  
17 and sufficient cause why the Defendant should not be  
18 pronounced, that this is an order of judgment for a conviction  
19 on this count; is that correct?

20 A That's correct.

21 Q Okay. You can take that down.

22 How old was the Defendant at the time of this offense?

23 A We looked into the -- I looked into the birthdate. She  
24 would have been probably eight years old when the offense began  
25 and nine at the time of sentencing.

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1 Q How about the Defendant?

2 A He would have been approximately 20 years old.

3 Q And through your investigation, did you come to learn that  
4 the Defendant was related to this victim?

5 A I did.

6 Q How so?

7 MR. ROYAL: Objection, that calls for hearsay.

8 There's no foundation for how this agent got this knowledge.

9 THE COURT: You can ask the question how he knows.

10 MS. SMITH: Thank you.

11 THE WITNESS: So the victim was his little sister.

12 BY MS. SMITH:

13 Q Okay. And how did you learn that information?

14 A I learned that through the Defendant himself.

15 Q Thank you. I'm going to direct your attention now to the  
16 search warrant at 26355 Annapolis in Dearborn Heights,  
17 October 23rd, 2015. Were you involved in the execution of a  
18 federal search warrant at this house?

19 A Yes, I was.

20 Q And what was the purpose for the search warrant?

21 A The purpose of the search warrant was to search the house,  
22 external storage buildings and vehicles for evidence of the  
23 distribution, possession and receipt of child pornography.

24 Q And what was your role that day?

25 A I was the case agent. So I guess that would make me the

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1 organizer of the search.

2 Q How many agents were there to execute the search warrant?

3 A Again, this was a task force. So it was a mix of agents  
4 and other law enforcement personnel. There were approximately  
5 10 to 12 present.

6 Q I'm sorry, I didn't mean to interrupt you.

7 A That's okay. I was finished.

8 Q And is that an average number of law enforcement for a  
9 typical search warrant?

10 A Yes, it is.

11 Q And did each person have a role to play that day?

12 A Yes.

13 Q What were some of the roles that you assigned?

14 A So for the roles, we had an entry team, which was the team  
15 that would clear the house and make sure there were no dangers  
16 in there. We had individuals assigned to take photographs of  
17 the residence. Individuals were assigned to search the  
18 residence. Individuals were assigned to conduct interviews,  
19 and an individual was assigned to be the evidence custodian.  
20 So he was the person that received all the evidence and created  
21 a log of that evidence.

22 Q Did you assign somebody to do a preliminary review of  
23 media in the house?

24 A Yes, I did.

25 Q What time did you arrive that morning?

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1 A It was approximately 6:45 a.m.

2 Q Did you knock on the door?

3 A I did.

4 Q Did anybody answer?

5 A No.

6 Q So what did you do next?

7 A So I guess to explain the situation, we had other members  
8 of the search crew who were on what we call the perimeter. So  
9 they were on the sides of the house. I asked if anybody heard  
10 any movement or saw any lights. The answer was no. I knocked  
11 again, announced "police, search warrant, open the door." With  
12 no response, I ordered one of our guys to force entry into the  
13 residence.

14 Q And was entry forced?

15 A It was.

16 Q When you entered the home, did you see any occupants?

17 A Not at first.

18 Q At what point did you see somebody?

19 A So as the front door was open, I would have been the third  
20 or fourth in a line of approximately five individuals. The  
21 doorway that we opened came directly into the living room.  
22 Behind the living room was a kitchen, and between those two and  
23 the entrances, mostly in the kitchen, was a stairway. As we  
24 rounded the corner, I observed Courtney Jennings coming up the  
25 stairs.

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1 Q Now, let's back up a minute. What type of house is this?

2 A I would describe it as a single story ranch with a  
3 basement.

4 Q How many bedrooms or rooms are on the first floor?

5 A So on the first floor, when you walk in the door, there is  
6 a living room. Directly across from that is a kitchen. Behind  
7 the kitchen is what is probably a dining room but it was used  
8 for storage. To the right of that was a small short hallway.  
9 There was a bathroom and two other what would be designed as  
10 bedrooms on that side.

11 Q How about the basement, how was the basement laid out?

12 A So for the basement, the stairway of the basement led  
13 through the kitchen. So you would come down the kitchen stairs  
14 onto a landing. At the landing was a door that opened to the  
15 outside to the driveway. You made a turn to the right and that  
16 would take you down the stairs. Once you got to the bottom of  
17 the stairs it opened up into a large room that was partially  
18 finished. There was a washer, a dryer machine down there, dog  
19 food bowls. To the right of that was a room that appeared to  
20 be being used as storage room. It had an aquarium, had what I  
21 assumed were pet turtles. There was a small corridor that led  
22 between that room and another room, which was the bedroom of  
23 the Defendant and Courtney Jennings.

24 Q The rooms that had the aquarium and bedroom, they were  
25 connected you said by a small passageway?

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1     **A**     Yes. It was very small. It was like a block had been  
2     knocked out. It was wide enough for me to walk through, but a  
3     large man would have had trouble getting through it.

4     **Q**     And were there doors on any of these rooms?

5     **A**     Yes, there were exterior doors for both rooms.

6     **Q**     And did the doors have deadbolts on them?

7     **A**     They did.

8     **Q**     So in order to access either the room with the aquarium or  
9     the bedroom or that little walkway through, if the doors were  
10    locked, would one need a key to get in?

11           **MR. ROYAL:** Well, I object to the leading question,  
12    your Honor. The testimony should come from the witness not  
13    from the U.S. Attorney.

14           **THE COURT:** Overruled.

15           **MS. SMITH:** Thank you.

16    **BY MS. SMITH:**

17    **Q**     You can answer the question.

18    **A**     Yes, the doors appeared to lock from the inside so you  
19    would either need to be inside the room to unlock the door or  
20    have a key.

21    **Q**     All right. Turning back to when you made entry into the  
22    home. You testified that Courtney Jennings came upstairs.  
23    What happened with her at that point?

24    **A**     She came up. She appeared distraught. She was yelling at  
25    us not to shoot her dog. I called for Special Agent Lauren

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1 Williamson to speak with her.

2 Q Why did you choose her?

3 A Whenever we can, when we have a female on the task force,  
4 we're going to have to do a protective sweep of the house  
5 that's going to include a frisk of the individuals to make sure  
6 they don't have a gun or knife or something that's going to  
7 hurt us. Where possible, if we have a female, I would prefer a  
8 female agent to handle that duty.

9 Q And was there anything physically different about her?

10 A Yes. We learned pretty quick that she was pregnant.

11 Q All right. And at some point did you see the Defendant?

12 A I did.

13 Q And what point did you see him?

14 A So as Courtney was being talked to by Special Agent  
15 Williamson, who had escorted her behind the five of us that  
16 were making initial entry, I observed the Defendant coming up  
17 the stairs carrying a cell phone.

18 Q And what happened with the Defendant at that point?

19 A At that point, the Defendant was ordered to place the cell  
20 phone on the stove, which was right beside the stairs. At that  
21 point, another officer or agent talked to Mr. Jones.

22 Q Okay. Were the occupants -- these two occupants then,  
23 where did they end up staying in the house during the search?

24 A So at the beginning, I don't know exactly where they were.  
25 However, once the house was cleared and I was back upstairs,

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1 they were seated on the couch.

2 Q Were they allowed to move around during the execution of  
3 the search warrant?

4 A Absolutely not.

5 Q Why not?

6 A There's a couple reasons. One is our primary goal is to  
7 do a search warrant of the house. So that means we're going to  
8 look everywhere, because we're looking for small devices; we're  
9 talking USB sticks, small SD cards. We don't want the  
10 occupants of the house to have an opportunity to move evidence  
11 or perhaps take a piece of evidence that we wouldn't have found  
12 and place it in a place we've already marked as searched. So  
13 that's one reason. The other reason is strictly safety issues.

14 Q Were they allowed to leave?

15 A Absolutely.

16 Q Did one your law enforcement members take pictures that  
17 day?

18 A Yes.

19 Q I'm going to turn your attention to Exhibit 5 in the  
20 exhibit book. There are 17 pages to Exhibit 5. Can you take a  
21 look at those? Do you recognize those?

22 A Yes, these are the photos that were taken the morning of  
23 October 23rd on the search.

24 Q And do those photos fairly and accurately depict the scene  
25 as you observed it on October 23rd, 2015?

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1     **A**     Yes.

2                   **MS. SMITH:** Your Honor, at this time I move to admit  
3 Exhibit 5.

4                   **MR. ROYAL:** No objection.

5                   **THE COURT:** Any objection?

6                   **MR. ROYAL:** No objection.

7                   **THE COURT:** I receive Proposed Exhibit 5 for the  
8 Government.

9                   **MS. SMITH:** Thank you. I would like to publish some  
10 of these pictures to the jury.

11                   **THE COURT:** You may.

12 **BY MS. SMITH:**

13 **Q**     All right. Let's start with 135.

14                   What are we looking at here?

15 **A**     This is the residence of the Defendant that we searched  
16 that morning, the outside.

17 **Q**     And let's look at Number 2.

18                   What are we looking at here?

19 **A**     This is the front bedroom of the house. This is just  
20 beyond the door we made entry through. That is the Defendant  
21 seated on the couch along with his stepdaughter, Courtney  
22 Jennings.

23 **Q**     Number 3?

24 **A**     Number 3, this is the kitchen. You can see to the left of  
25 the photo some hands and the lower torso, maybe it's the leg

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1 and arm area of one of our agents. That is the stairs that  
2 lead down to the basement. Behind that is the door that opens  
3 to the driveway.

4 Q So that door on the left-hand side is an exterior door?

5 A Yes, ma'am.

6 Q If one were to go down that hallway and turn right, would  
7 they be going down the basement?

8 A Yes.

9 Q And Number 4, what is this?

10 A Number 4 is, again, the kitchen area. Just beyond that is  
11 what I believe is designed as a dining room area but it was  
12 used for storage.

13 Q Number 5?

14 A Number 5 is another angle in that front living room area  
15 that we made entry through, and again, seated on the couch is  
16 the Defendant and his stepdaughter Courtney Jennings.

17 Q Just for the record, are they in handcuffs?

18 A No, they are not.

19 Q Page 6.

20 What is the jury seeing here?

21 A So Page 6 is depicting that room I described earlier.  
22 That would be the first room behind a door that you would  
23 encounter in the basement. This is the room that appeared to  
24 be used for storage and it had those turtles.

25 Q Is that the aquarium you referred to earlier?

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1 A Yes, it is.

2 Q Page 7?

3 A This is a photograph of one angle of the bedroom of the  
4 Defendant and Courtney Jennings.

5 Q And what's hung up on the wall there that's in the middle  
6 of the picture?

7 A That is a large TV or monitor.

8 Q Okay. And then towards the front middle part of this  
9 picture, is there another screen there?

10 A Yes, it appears to be a computer monitor.

11 Q Okay. Is that the bed over on the right-hand side?

12 A It is.

13 Q Number 8?

14 A Number 8 is also a picture of the Defendant and Courtney  
15 Jennings' bedroom taken from a different angle.

16 Q And what do we see in the upper right-hand corner?

17 A That is a television or large monitor that is displaying  
18 the security cameras to the exterior of the home.

19 Q Did your photographer take what are known as entry  
20 pictures and exit pictures on this day?

21 A Yes.

22 Q What is a -- what are entry pictures mean?

23 A Would it be okay if I outlined the process and how we do  
24 these pictures?

25 Q Yes.

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1     **A**     So when we make entry to a home, the first thing we do is  
2     have our photographer take photographs. Those photographs will  
3     tell the outside the residence, to include the address if it's  
4     affixed. They will also take conditions of -- photos of  
5     conditions of the house; so the shape it's when we made entry.  
6     If we did any damage to the door, they'll document that. Once  
7     that's done, our search team will begin their search. As the  
8     search team finds items of interest that they think we should  
9     collect as evidence, the photographer will come and take  
10    photographs of those items in the place they were found. Once  
11    the search is complete, the photographer will take exit photos.  
12    So again, he's documenting -- he or she -- the condition of the  
13    house when we leave.

14   **Q**     And given the time stamp here, 7:58 a.m., is this what the  
15    bedroom looked like before the search?

16   **A**     Time stamp says 6:58.

17   **Q**     I'm sorry, 6:58 a.m.

18   **A**     Yes, that is the time that the camera stamped on the  
19    photo.

20   **Q**     Okay. Next page, Number 9.

21   **A**     This is at the far end of the basement, depicts a storage  
22    area. There's a computer server there and a TV or monitor  
23    hanging on the wall.

24   **Q**     Number 10?

25   **A**     Number 10 is that corridor I spoke about earlier that goes

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1 between what we'll call the turtle room and the bedroom of the  
2 Defendant and Courtney Jennings.

3 Q All right. What is at the top of this picture?

4 A It's a TV or monitor.

5 Q So in order to get through -- okay. Are we looking at the  
6 Defendant's bedroom in the blue paint?

7 A Yes.

8 Q And in order to get through that doorway, would somebody  
9 have to bend over to get through?

10 A I may not but someone else might, yes, ma'am.

11 Q Okay. And in between, we see somebody standing there on  
12 the other side. Are they standing in that room with the  
13 aquarium?

14 A Yes.

15 Q I know it's hard to see in this picture, if one were to  
16 take one step over that concrete wall that's been knocked out,  
17 is there -- could they move to the left?

18 A Yes, there is a very narrow space between the walls of  
19 each room there.

20 Q And just for the record, are those wires or network cables  
21 that are hanging in that room?

22 A Yes. There were all types of wires between that -- those  
23 two rooms.

24 Q Picture Number 11, please.

25 And what are we looking at here?

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1     **A**     So in the previous picture, you asked if you turned left  
2     if there was room back there. This is a depiction of that  
3     space between the two walls.

4     **Q**     Okay. Approximately how wide is that?

5     **A**     It's not very wide. I would estimate that it's maybe two  
6     to three feet wide.

7     **Q**     And what are we looking at here?

8     **A**     Those are wires. I mean it looks like there's network  
9     wires there, perhaps power and cable, and some type of  
10    electronic device.

11    **Q**     Okay. Number 1, please.

12           What's this a picture of?

13    **A**     This is also that same room. This is taken lower down  
14    toward the floor. The floor is actually at the bottom. You  
15    can see a trash bag there and there is a computer -- laptop  
16    computer sitting on top of the trash bag.

17    **Q**     Let's move to Number 17.

18           What are you looking at here?

19    **A**     17 is the entryway into one of the upstairs bedrooms.  
20    That would be the bedroom down the hallway and to the front  
21    side of the house.

22    **Q**     At some point in the beginning of this search, did another  
23    person arrive at the residence?

24    **A**     Yes, I had -- we had completed the clear of the search for  
25    persons or weapons. I went outside to grab a notebook and

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1 take off some of the gear, and we had a Dearborn Heights police  
2 unit there who waved me down and said that the wife of the  
3 Defendant had pulled into the area.

4 Q And what's her name?

5 A Her name is Tiffany Jones.

6 Q When you say take off some gear, what do you mean?

7 A Well, I had a ballistic vest on, some other gear, just a  
8 lot of stuff that the house was secure now that I didn't need.

9 Q Is it normal -- standard procedure to wear a ballistics  
10 vest when you execute a search warrant?

11 A Absolutely, we've had even here in Detroit people shoot  
12 through doors at us.

13 Q What happened with Tiffany Jones?

14 A So Tiffany Jones was stopped by the marked units. They  
15 were speaking to her. They waved me over and I went over and  
16 spoke with her myself and Special Agent Lauren Williamson.

17 Q Okay. Without you telling what she said or you said, did  
18 she remain for the search of the house?

19 A She did.

20 Q And where was she during the remainder of the search?

21 A I don't know exactly. I know two of our task force  
22 officers spoke with her, but I'm not sure where that  
23 conversation happened.

24 Q Were the occupants of the house asked to be interviewed  
25 that day?

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1 A Yes.

2 Q Did you perform some of those interviews?

3 A Two of those interviews, yes.

4 Q Who did you interview?

5 A Myself and Special Agent Williamson interviewed the  
6 Defendant as well as Courtney Jennings.

7 Q All right. Let's talk about your interview of the  
8 Defendant. Where did you take him for this interview?

9 A So we did the interview in the, what I refer to as the  
10 workout room. It's that front bedroom we saw a photo of where  
11 there was a treadmill just beyond the door.

12 Q Did the Defendant agree to be interviewed?

13 A Yes.

14 Q Why would you take him in a different room?

15 A Privacy, that's the main reason. We don't want anyone  
16 else in the house to hear what we're talking about.  
17 Oftentimes, it makes the individual we are talking with more  
18 comfortable.

19 Q Okay. Where was everybody sitting during this interview?

20 A Special Agent Williamson and myself stood. There really  
21 wasn't any seating in there. The Defendant sat on I can best  
22 describe it as a weight bench.

23 Q Did you have an opportunity to observe the Defendant's  
24 demeanor?

25 A Yes.

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1 Q And how would you describe it?

2 A He appeared calm, cooperative.

3 Q Did you ask him where he worked?

4 A I did.

5 Q What did he say?

6 A He said that he worked for Wide Open West and that he was  
7 a service installation technician. Basically, his job was to  
8 go and perform service in and out of people's houses.

9 Q Did he say -- did you ask him if he had Internet access at  
10 his house?

11 A I did.

12 Q And what did he say about that?

13 A He said that he had Internet access through to the house  
14 and it was provided through Wide Open West. He said that he  
15 got a discount on it as an employee. He also said that there  
16 was wired Internet so physical wires, and he also said that  
17 there was password-protected wireless Internet in the house.

18 Q What is your understanding of password-protected wireless  
19 Internet?

20 A So my understanding of password-protected wireless  
21 Internet is that it requires a password to connect to that  
22 Internet. Sometimes individuals who may not know what they're  
23 doing set up their network as open and then anyone can connect  
24 to it. So when the Defendant tells me that the Internet --  
25 wireless Internet is password protected, I take that to mean

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1 you require a password to connect to the Internet.

2 Q Did you ask him about his activities on October 18th and  
3 19th of 2015?

4 A I did.

5 Q And what, if anything, did he say?

6 A He stated that he would have been home those evenings. I  
7 believe he -- well, he did. He said that Tiffany Jennings as  
8 well as Courtney Jennings were also home those evenings.

9 Q Did he say whether anybody else was at the house those  
10 nights?

11 A He said those were the only three people home those  
12 nights.

13 Q Did you ask him which computer was his main computer?

14 A Yes.

15 Q And what did he say?

16 A He said the Asus computer between the rooms by the  
17 turtles.

18 Q Did you in fact find the Asus computer in the room in  
19 between the turtles?

20 A Yes. It was the laptop computer we saw in the picture  
21 laying on the trash bag.

22 Q Did you ask him about Ares peer-to-peer file sharing  
23 program?

24 A I did.

25 Q And what, if anything, did he say about that?

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1     **A**     He said that he used the Ares peer-to-peer file network  
2     system to download child pornography.

3     **Q**     And did he admit that he downloaded child pornography as  
4     well?

5     **A**     He did.

6     **Q**     Did you ask him how many times he downloaded child  
7     pornography?

8     **A**     Yes.

9     **Q**     And what was his answer?

10    **A**     Less than 100 times.

11    **Q**     Did you ask him if you would find child pornography on  
12    that laptop computer?

13    **A**     Yes.

14    **Q**     And what was his answer?

15    **A**     He said that we probably would find child pornography on  
16    that computer. He said that he moved some of those images or  
17    videos to another folder on that computer to prevent people  
18    from downloading them from him and to delete them.

19    **Q**     He said he intended on deleting the files?

20    **A**     Yes.

21    **Q**     But he said he moved them to another folder?

22    **A**     Yes.

23    **Q**     How long was this interview?

24    **A**     I would estimate approximately 20 to 30 minutes. It was  
25    very short.

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1 Q After that interview was over, did you ask him to  
2 accompany you to the downtown Detroit FBI office for a second  
3 interview?

4 A Yes.

5 Q And did he agree?

6 A He did.

7 Q And what happened next?

8 A So at that point, I asked him if he needed to get some  
9 breakfast or brush his teeth or change clothes. He indicated  
10 that he would like to brush his teeth and change clothes. So I  
11 went out to make some phone calls and one of our other officers  
12 or agents assisted him in locating his clothes and brushing his  
13 teeth.

14 Q Was he under arrest at that point?

15 A No.

16 Q I'm going to direct your attention to the interview at the  
17 FBI building in Detroit. Approximately how long was the drive  
18 there?

19 A Depending on traffic it's 20 to 25 minute drive.

20 Q Were you in the car with the Defendant?

21 A Yes.

22 Q Who else was in the car with him?

23 A Special Agent Lauren Williamson.

24 Q And did the Defendant engage in conversation during this  
25 ride?

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1 A Absolutely.

2 Q Just generally, what was the topic of conversation?

3 A It was a friendly conversation. It wasn't about what was  
4 going on at the house. We talked about a lawsuit that involved  
5 his mother, I believe, and a hospital. We talked about  
6 traffic. We talked about a dangerous intersection there in  
7 Taylor. It was just very -- not related to the case at all.

8 Q What was his demeanor like?

9 A Again, he was calm and seemed cooperative.

10 Q When you arrived at the FBI in Detroit, did you get him  
11 something to eat and drink?

12 A Yes.

13 Q What was that?

14 A It was two bottles of water and a granola bar that I  
15 bought out of our pantry.

16 Q Did you take him to meet Special Agent Michael Fitzgerald?

17 A Yes.

18 Q Was the purpose of that meeting for the second interview?

19 A Yes, it was.

20 Q Was the Defendant advised of his what are sometimes known  
21 as Miranda rights at that time?

22 A Yes.

23 Q Was he under arrest at that point?

24 A No.

25 Q Who else was in -- strike that.

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1 Did you witness him being read his rights?

2 **A** I did.

3 **Q** I'd like you to turn to Exhibit 17. Do you recognize  
4 that?

5 **A** Yes.

6 **Q** What is that?

7 **A** That's a form we refer to as an FD395. It's an FBI advice  
8 of rights form. It's commonly known as the Miranda rights.

9 **Q** And does it have the Defendant's signature on it?

10 **A** Yes.

11 **Q** Did you witness the signature?

12 **A** I did.

13 **MS. SMITH:** Your Honor, at this time I move to admit  
14 Exhibit 17.

15 **THE COURT:** Any objection?

16 **MR. ROYAL:** My position is on the record, your Honor.

17 **THE COURT:** All right. Subject to what's on the  
18 record, it's accepted as Government 17? 16?

19 **MS. SMITH:** 17.

20 **THE COURT:** 17.

21 **MS. SMITH:** Only Exhibit 17. Correct.

22 **BY MS. SMITH:**

23 **Q** Did you witness him being administered these rights?

24 **A** I did.

25 **Q** How were they administered?

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1   **A**     Special Agent Fitzgerald handed him a piece of paper that  
2   reads exactly like this.   The FD395 was a physical copy.   He  
3   asked Mr. Jones, the Defendant, to read it aloud, which the  
4   Defendant did do.

5   **Q**     After those advice of rights were administered, did you  
6   leave the room?

7   **A**     After the Defendant signed the form electronically, yes, I  
8   did.

9   **Q**     At some point, did Special Agent Fitzgerald come and get  
10   you to come back in the room?

11   **A**     He did.

12   **Q**     And what happened when you got back in the room?

13   **A**     Special Agent Fitzgerald summarized statements that the  
14   Defendant had made in his presence.

15   **Q**     And who was present for that?

16   **A**     Special Agent Fitzgerald, Special Agent Williamson, myself  
17   and the Defendant.

18   **Q**     And what was the Defendant doing while this agent  
19   summarized the interview?

20   **A**     He was sitting there listening, not objecting.  
21   Occasionally he would nod in agreement.

22   **Q**     After this second interview, what happened with the  
23   Defendant?

24   **A**     He was placed under arrest.

25   **Q**     And what -- how was the decision made to place him under

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1 arrest?

2 **A** I contacted the United States Attorney's office.

3 **Q** And did you receive authorization to arrest him at that  
4 point?

5 **A** I did, through a way of a criminal complaint and federal  
6 arrest warrant.

7 **Q** And approximately what time of day was that on  
8 October 23rd?

9 **A** Are you asking when he was arrested?

10 **Q** Correct.

11 **A** Approximately 2:30 p.m.

12 **Q** And did you take him to the -- where did you take him?

13 **A** Special Agent Williamson and myself took him to the United  
14 States Marshals in downtown Detroit.

15 **Q** Did you frisk him before you took him downtown?

16 **A** Yes, before we left.

17 **Q** And what, if anything, did he have on him?

18 **A** He had a Michigan driver's license, approximately \$640 in  
19 cash and what appeared to be a house key. It had a Detroit  
20 Tigers logo on it.

21 **MS. SMITH:** One moment, please.

22 No further questions at this time, your Honor.

23 **THE COURT:** And for the Defendant.

24 **MR. ROYAL:** Thank you, your Honor.

25 (11:47 a.m.)

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**CROSS EXAMINATION**

**BY MR. ROYAL:**

**Q** Good morning, Agent Nichols.

**A** Good morning.

**Q** You indicated that you attended the FBI academy at Quantico, Virginia; is that correct?

**A** That's correct.

**Q** And you graduated I think you said in 2012?

**A** Also correct.

**Q** And at that time, you were sworn in as a special agent; is that correct?

**A** Well, it's -- they swear you in at the beginning and then at the end as well, but yes, that's correct.

**Q** Special agent is a rank, it's sort of like the title police officer; is that correct?

**A** It is, yeah.

**Q** I mean everybody, every agent who graduates from the academy and joins the FBI is called a special agent, correct?

**A** If they graduate as the -- from the new agent programs, yes.

**Q** And so it's not like you had to serve for some period of time and then you were promoted to special agent, you've always been a special agent since you've been with the FBI; is that correct?

**A** That's correct.

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1 Q And during the time that you were at Quantico, you took a  
2 number of classes in law enforcement; is that correct?

3 A Yes.

4 Q And you also received some training in how to testify in  
5 court; is that correct?

6 A We did, yes.

7 Q And you're trained to -- in fact you went through  
8 rehearsal sessions at the academy on practicing how to testify;  
9 is that correct?

10 A Yes.

11 Q And you're trained to dress professionally; is that  
12 correct?

13 A I don't think anyone needs to be trained to dress  
14 professionally. That's not one of the topics, but we are  
15 trained in multiple different things.

16 Q And you're trained to get eye contact with the members of  
17 the jury; is that correct?

18 A Sure.

19 Q And you're trained to familiarize yourself with your  
20 testimony so you don't have to refer to documents during the  
21 actual testimony; is that correct?

22 A That's correct, yes.

23 Q And since you received -- and you're trained to look calm  
24 and relaxed and very professional; is that correct?

25 THE COURT: Excuse me.

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1           **MR. ROYAL:** Thank you, your Honor, could I just have  
2 a moment?

3           **THE COURT:** This is presumably related to  
4 sequestering witnesses. You may continue, Mr. Royal.

5           **MR. ROYAL:** Thank you, your Honor. I apologize for  
6 the interruption.

7 **BY MR. ROYAL:**

8 **Q** And in addition to that, since you graduated from the  
9 academy, you've testified in court on a number of occasions  
10 since 2012; is that correct?

11 **A** That's correct.

12 **Q** So you've got experience in how to be comfortable and  
13 testify in a professional manner; is that correct?

14 **A** Yes, sir.

15 **Q** Okay. Now, you've referred to the IP address, and I'm  
16 trying to understand that. The IP address is unique to an  
17 account or is it unique to a piece of equipment?

18 **A** For -- and we're talking specifically about for Wide Open  
19 West. That IP address is going to be on the public side of the  
20 cable modem device installed at the service address.

21 **Q** So no matter what happens to that account, it's your  
22 understanding that the IP address would remain the same?

23 **A** No.

24 **Q** As long as the cable modem is intact?

25 **A** No.

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1 Q That's not correct?

2 A That's right.

3 Q Could you explain it to me?

4 A So IP addressing works on a couple of different methods.  
5 One of those is called DHCP, and that is generally what's used  
6 for residential services. The other is a static address, and  
7 that is an IP address that never changes. So for residential  
8 addresses, that address can change.

9 Q So what would cause it -- even though the cable modem box  
10 remains the same, the IP address could change?

11 A Yes, sir.

12 Q And do you have any idea what would cause it to change?

13 A Absolutely.

14 Q What?

15 A So DHCP is access. This is a server, and so the cable  
16 modem device or a computer or a cell phone would say, hey, I  
17 need an IP address -- and I'm oversimplifying this of course.  
18 That server would then assign an IP address for a specific  
19 amount of time that's called DHCP lease. Once that lease  
20 expires, that device will request to retain that IP address.  
21 Sometimes that happens and sometimes it doesn't.

22 Q Okay. So that's something that's done by the Wide Open  
23 West company?

24 A Correct.

25 Q And what if someone is late paying their bill and they get

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1 a -- and their equipment is shut off, would that generate the  
2 change in the IP address?

3 A Well, if it was shut off, it shouldn't have an IP address.

4 Q No. I'm saying -- suppose they did pay the bill and it got  
5 turned back on, would it have a different IP address at that  
6 point?

7 A I don't know how they do their system, but certainly  
8 could.

9 Q Did you ever subpoena records from Wide Open West to see  
10 when that IP address had last changed prior to October 23rd?

11 A Not specifically. In the response, it shows how long that  
12 particular IP address had been assigned to that residence.

13 Q And does that show in one of the exhibits that we've  
14 looked at?

15 A Yes. It was Page 1 that you asked me about earlier. It's  
16 on Page 1.

17 Q So what's your understanding of when that IP address went  
18 into effect?

19 A I would have to look at that Page 1 to be sure.

20 Q Okay. Could you do that, please?

21 A Yes, sir. Do you remember the exhibit?

22 Q I think it's 4.

23 A Yes, sir. I have it here.

24 Q So that page says "lease," is that a reference to the IP  
25 address being leased?

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1 A Correct, yes, sir.

2 Q And this indicates that the IP address started on  
3 September 14th, 2015 and ended on October 20th, 2015; is that  
4 correct?

5 A That's correct. And the end time there is not necessarily  
6 indicative of the time it ended, but that's the cutoff for the  
7 subpoena that I sent. They didn't give me information past  
8 that date.

9 Q Past October 20th?

10 A Correct.

11 Q But the IP address started being operational on  
12 September 14th?

13 A Yes, in relation to this specific cable modem referenced  
14 by this relay agent. So the serial number, yes, sir.

15 Q And is that why the indictment reads, "Starting on  
16 September 14, 2015 --

17 MS. SMITH: Objection, your Honor. It's not  
18 relevant, and the witness cannot testify to what the  
19 indictment -- why the indictment was crafted in a certain way.

20 THE COURT: I don't -- as capable as Agent Nichols  
21 is, I don't think we want him to have an opinion with regard to  
22 what the indictment says or doesn't say.

23 BY MR. ROYAL:

24 Q Well, Agent Nichols, you agree that the indictment in this  
25 case does set forth a time period; is that correct?

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1 A Yes, my understanding, it does set forth a certain time  
2 period.

3 Q I'm sorry?

4 A Yes.

5 Q And that time period begins September 16th, 2015; is that  
6 correct?

7 A I would have to look at the indictment. I don't know what  
8 the time period is.

9 Q Okay. Well, you testified before the grand jury; is that  
10 correct?

11 A I did.

12 MR. ROYAL: May I approach, your Honor?

13 THE COURT: You can.

14 BY MR. ROYAL:

15 Q Handing you a copy of the first superseding indictment in  
16 this case.

17 THE COURT: What is it you're having him look at?

18 MR. ROYAL: The first superseding indictment.

19 THE WITNESS: And what --

20 BY MR. ROYAL:

21 Q Is that correct, that the period charged in the indictment  
22 begins on September 16th, 2015?

23 A I would assume so. It's listed in the indictment, sir.

24 Q Now, as I understand your testimony, when you were taking  
25 these screen shots on October 18th and 19th, 2015, you were not

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1 communicating with another human being directly; is that  
2 correct? This was not like a chat room, was it?

3 A That's correct.

4 Q Okay. So under the Ares system, correct me if I'm wrong,  
5 but as I understand your testimony, the Ares system, you  
6 identified a shared folder that you thought would contain child  
7 pornography; is that correct?

8 A Well, not necessarily. I identified a device that was  
9 sharing files of interest, which again were likely child  
10 pornography.

11 Q And you went into that shared folder to see what was in  
12 there; is that correct?

13 A Yes, that shared folder was open to the Internet, to  
14 everyone, so yes.

15 Q So anyone who had access to the Ares system could access  
16 that shared folder; is that your testimony?

17 A Yes, sir.

18 Q And you looked at what was in that shared folder; is that  
19 correct?

20 A That's correct.

21 Q So but you were not asking someone for permission to look  
22 at those folders or to make copies of them, you were just doing  
23 that; is that correct?

24 A That's right. I don't have to ask permission for  
25 something that's open.

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1 Q Well, I'm not saying you did have to have it. I'm saying  
2 in fact you didn't communicate with any person about what was  
3 in that shared folder; is that right?

4 A No, I didn't.

5 Q And so you referred to the times that are generated on  
6 your the screen shots that you took. So you -- so for example,  
7 on Exhibit 1A, you listed a time as 18 -- I'm sorry, the time  
8 as 22:48:12?

9 A I'm sorry is this 1A, you said?

10 Q 1A, correct, the first one.

11 A Okay. I have it here.

12 Q Now, translating that into real time here in the Eastern  
13 District of Michigan, are you saying that to get the time here,  
14 I'd have to deduct four hours from that time?

15 A For this time of the year, yes, sir.

16 Q It was that same time of year that you did this  
17 investigation?

18 A Yes, correct.

19 Q So the actual time at the time you took this screen shot  
20 would have been 22 minus 4 or 18:42:12 is that correct?

21 A Yes.

22 Q Which would be 6:48:12 p.m.?

23 A 18, would be -- yes, 6:48:12.

24 Q That would hold true for all the times, that they would --  
25 to get the actual time, local time, you'd have to deduct four

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1 hours from it?

2 **A** That's correct. And then of course if you don't  
3 understand the 24-hour clock, you'd have to compensate for  
4 that, but yes, you're right.

5 **MR. ROYAL:** Could we put 1A up on the screen, please?

6 **BY MR. ROYAL:**

7 **Q** All right. Now, the notation in the bottom right-hand  
8 corner with your name and date and time on it, that's not  
9 something that you saw on the computer screen that's something  
10 you added to this exhibit; is that correct?

11 **A** No, I didn't add it.

12 **Q** Okay. So how did it get onto the screen in the computer?

13 **A** Well, as I talked about earlier, we use a specific law  
14 enforcement tool and it takes screen shots as we're  
15 downloading, by the software itself. So the software  
16 superimposes that on there at the time it takes the screen  
17 shot.

18 **Q** Okay. So the software you're using superimposes that  
19 information on the screen shot, correct?

20 **A** At the time it takes the screen shot, yes.

21 **Q** But the rest of the screen is something that came off of  
22 the Internet; is that correct?

23 **A** I'm sorry? I don't understand what you're asking.

24 **Q** Okay. Other than -- there's nothing on the screen that  
25 came from your software, other than your name and the date and

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1 time in the bottom right-hand corner; is that correct?

2 A No. This is the screen shot of my software.

3 Q Okay. But the screen shot -- okay. So you're saying  
4 because of your software you can get the data off the Internet  
5 and put it into this format; is that correct? Is that what  
6 you're saying?

7 A I still don't understand what you're asking.

8 Q I'm saying that suppose someone is not using your  
9 software, would they be able to get the same screen up without  
10 your name and address and the name and the date and time on it?

11 A No.

12 Q So your software is specially designed to put the data  
13 into this format?

14 A Right. So as you look at this, you see in the top left  
15 corner, it says LE1.03, and that indicates the version of the  
16 law enforcement software we're using. Now, this thing is  
17 similar in that it has similar tabs to what we saw, but they  
18 are completely different from the commercially available Ares  
19 program.

20 Q So someone who did not have the software would see some of  
21 this data but in a different format --

22 A They would --

23 Q -- if they went into that shared file folder?

24 A This is only depicting the download of that file from that  
25 folder. So if they were to do that download and they were to

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1 go to their software to the transfers tab, they would see  
2 similar fields. So they would see the name of the file. They  
3 probably wouldn't see the hash. They would see, possibly, the  
4 user they're downloading it from if it was -- there was only  
5 one user if it was a super unique file. They may see multiple  
6 users there. If it's downloading from multiple users, you  
7 would see a drop down underneath that where it says anon\_ 450E,  
8 and that would have all the users listed and the parts of the  
9 file as they were being downloaded as a status board.

10 Q All right. Now, in this shared folder that you were in --  
11 and you told us that it's common among people who are involved  
12 in child pornography, that if you want to get something you  
13 have to give something?

14 A That's correct.

15 Q Okay. You didn't give anything in exchange for these  
16 files that you downloaded, did you?

17 A No, I didn't.

18 Q Okay. There was nothing on this shared folder that  
19 invited you to make copies of what's in that folder, was there?

20 A I'm sorry?

21 Q There was nothing written in this shared folder that said  
22 "help yourself" or "this is yours for the taking" or invited  
23 people to make copies and download these files; is that  
24 correct?

25 A That's the very purpose of the software is to invite

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1 people to download files.

2 Q Well, that's your assumption?

3 A No, that's the way the software is set up, sir.

4 Q But there's nothing written in the shared file that  
5 says -- that invites people to take anything, is there?

6 A You mean like a note?

7 Q Yes.

8 A No.

9 Q Okay. And when you downloaded this, you didn't leave any  
10 note saying "thanks for the software" or "I downloaded your  
11 files" or anything like that, did you?

12 A No, I didn't.

13 Q So the person who operates the shared folder would have no  
14 way of knowing that you had come in and copied any of those  
15 files; is that correct?

16 A Sure, they would.

17 Q How would they know?

18 A Well, all they have to do is look in their transfers tab  
19 for files that had been uploaded.

20 Q And that would say somebody had made a copy of their file?

21 A Yes, it would.

22 Q Now...

23 THE COURT: As long as we're taking a break --

24 MR. ROYAL: I'm sorry, your Honor?

25 THE COURT: As long as we are taking somewhat of a

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1 pause here, Mr. Royal, let me say that I've been holding my  
2 tongue to a certain extent to keep from saying to you, "You're  
3 going to do a proffer on why this is relevant to this jury."  
4 And that was especially true of all of the times you wanted to  
5 get earlier on, and I didn't interrupt you, but if that's  
6 relevant, I don't know how it is relevant to what the jury has  
7 got to decide in this case, and I think we're into that area,  
8 again, where the witness has been very knowledgeable and has  
9 been very forthcoming, but I don't think your questions are  
10 relevant to what the jury has to decide. I've said that, and  
11 I'll let you go ahead, but please keep that in mind.

12 **MR. ROYAL:** If the Court would like to meet with us  
13 at sidebar, I would be happy to explain my purpose.

14 **THE COURT:** If the Court what?

15 **MR. ROYAL:** If the Court would like to meet with us  
16 at sidebar, I would be happy to explain my purpose.

17 **THE COURT:** No, I'm not going to meet with you at  
18 sidebar.

19 **BY MR. ROYAL:**

20 **Q** Now, Mr. Nichols, you prepared a two-page report  
21 concerning the activity you described on August 18th and 19th;  
22 is that correct?

23 **A** I'm not sure of the number of pages. Two sounds right,  
24 yes.

25 **Q** And that's dated October 20th, 2015; is that correct?

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1     **A**     I would have to look at it to verify the date, but that  
2     sounds correct again.

3                 **MR. ROYAL:**   May I approach witness, your Honor?

4                 **THE COURT:**   You may.

5     **BY MR. ROYAL:**

6     **Q**     Agent Nichols, is that a copy of your report regarding  
7     these investigative activities?

8     **A**     Yes, sir, it is.

9     **Q**     Okay. Now, you prepared this report while these events  
10    were fresh in your mind; is that correct?

11    **A**     Yes, that was the next day.

12    **Q**     On October 20th?

13    **A**     Correct.

14    **Q**     Now, in part of this report, there's a reference to  
15    Sunday, October 18th, between 19:52 and 19:59 hours. Is that a  
16    reference to actual time or is that a reference to the  
17    universal time that you referred?

18    **A**     Everything in this report where there appears to be a  
19    time, it's going to be in UTC time.

20    **Q**     So you'd have to subtract four hours to get local time?

21    **A**     Correct -- well, yes, correct.

22    **Q**     At that time of year?

23    **A**     Yes.

24    **Q**     And according to this report, between those times of 19:52  
25    and 19:59, you downloaded one file, the Goldberg file; is that

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1 right?

2 A Well, that's -- so in this report, I only listed the  
3 complete downloads. So yes, I downloaded that file completely  
4 on that date and time.

5 Q But your report doesn't say that you were only listing  
6 complete files, does it?

7 A Successfully downloaded from the subject computer, that is  
8 what that means.

9 Q So you're saying that when it successfully downloaded,  
10 that means you feel you got the entire video?

11 A It's not that I feel, it's that I got the entire video.

12 Q There's nothing in this report that says that any of these  
13 files were being advertised or offered to anyone else; is  
14 there?

15 A Specifically states right there in the second paragraph  
16 that this was a candidate for 24 files of investigative  
17 interest, which means that they were publicly shared and  
18 available for anyone on the Internet using the Ares software.

19 Q So my question is your report doesn't say that these files  
20 are being advertised or offered?

21 A If you're asking if I used the word "advertised," I did  
22 not.

23 Q Now, you've indicated that you were in charge of the --  
24 during the search of the house in Dearborn Heights, there was a  
25 lot of computer equipment that was seized by you and your

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1 fellow agents; is that correct?

2 A Yes, sir.

3 Q And you found that this house was protected by a number of  
4 outside security cameras that were directed towards people who  
5 might approach the house from outside; is that correct?

6 A That's correct.

7 Q And one of the pictures we saw showed a screen with nine  
8 smaller screens which were recording information from those  
9 security cameras; is that correct?

10 A Yes.

11 Q And that security system was seized by you and your fellow  
12 agents; is that right?

13 A Someone there at the scene did seize that piece of  
14 evidence, yeah. There were actually two video recorders.

15 Q There was what?

16 A There were two DVRs for those computers.

17 Q Okay. And so the material that had been recorded for  
18 those cameras was seized along with the cameras and the screen  
19 inside?

20 A Right. Assuming that video recordings were on those  
21 devices, they would have been taken along with the device.

22 Q And did you view those videos on the security cameras?

23 A Yes, sure did.

24 Q And did you erase them prior to returning that equipment?

25 A I did not.

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1 Q Do you know if anyone did?

2 A I was the only person to look at those and if I didn't do  
3 it, no one else would have.

4 Q So your -- it's your position that whatever -- did you  
5 find that video had been recorded on the security system?

6 A Yeah, I found that video was recorded on it. The times  
7 were way off. It wasn't relevant to the case and I returned  
8 it, along with 30 or 40 other items that weren't relevant.

9 Q Did those security videos show you and your fellow agents  
10 approaching the house in the process of executing the search  
11 warrant?

12 A I believe they did, yeah.

13 Q But what you're testifying is that as far as you know,  
14 though, that system was returned intact and whatever was on it  
15 when you had it should have been on it when it was returned?

16 A Right. I gave it back to Tiffany Jones in the exact  
17 manner we took it.

18 Q Okay. And you also returned a number of other computer --  
19 a bunch of computer equipment that you found irrelevant to the  
20 case; is that right?

21 A Right. And again, I don't recall what those exact items  
22 were, but there were a multitude of items that were returned.

23 Q Now, I'd like to go through the scene photographs, Exhibit  
24 5, and ask you a few questions about them.

25 A You said Exhibit 5, sir?

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1 Q Yes.

2 A Okay. I have it.

3 Q Okay. The first photograph, which has the number 135 at  
4 the bottom is the outside view of the front of the house; is  
5 that correct?

6 Could we put that up on the screen, please?

7 It shows the outside of the house from the front; is that  
8 correct?

9 A Yes, sir.

10 Q Is that before or after you began to execute the search  
11 warrant?

12 A That is after we have cleared the house.

13 Q And that shows my client, Tommy Lee Jones', service van at  
14 the right with the WOW insignia on the side; is that correct?

15 A Yes.

16 Q And then the second picture -- can we show 138, please.  
17 That's the living room of the house; is that correct?

18 A Yes.

19 Q The front door that you gained access to would have been  
20 at the lower right-hand level out of view of that picture; is  
21 that correct?

22 A No. It would be to the lower left side of that picture  
23 out of view.

24 Q Okay.

25 A It would be just to the side of this couch there.

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1 Q And is the lighting in there the same type of lighting  
2 that was on when you were in there with my client and his  
3 stepdaughter?

4 A I don't believe that the front room was illuminated when  
5 we first made entry. That was probably turned on after.

6 Q Okay. And my client and his stepdaughter remained on that  
7 couch for several hours as you and your fellow agents performed  
8 that search; is that correct?

9 A No. Maybe Courtney did. I don't know, I wasn't there,  
10 but the Defendant was not on that couch for several hours.

11 Q And you're talking about the time you took him out to  
12 interview him, is that the difference?

13 A So the interview would have began very early. Again, we  
14 left the house at 8:30 to come back to the office for that  
15 second interview. We're taking entrance photos at just a  
16 little before 7:00. So at the most, he would have been on that  
17 couch for 30 or 40 minute. Again, with Courtney, I don't know  
18 how long she sat there.

19 Q All right. And looking at picture 140, please.  
20 That shows the kitchen stove; is that correct?

21 A Yes.

22 Q And where you directed -- well, were you the agent who  
23 directed my client to put his cell phone on the stove?

24 A No. That would have been one of the first two agents  
25 inside the house. Again, I was third or fourth.

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1 Q Okay. But you heard that?

2 A Yep, I heard that.

3 Q So is this a stove Mr. Jones was directed to put his cell  
4 phone on?

5 A Yes, it's the only stove there.

6 Q And he did so as directed; is that correct?

7 A That's correct.

8 Q And there were firearms directed at him when he was told  
9 to do that; is that correct?

10 A I don't know. I mean the standard is when we enter a  
11 house like that, we will have firearms drawn. Again, it's not  
12 my job to pay attention to the first two people. My job is to  
13 look straight and cover any area where an adversary could come  
14 from. So I would assume that yes, but I can't say whether or  
15 not they did.

16 Q Well, was your gun drawn?

17 A Absolutely.

18 Q And could we have picture 158, please.

19 That's another picture of my client and the stepdaughter,  
20 Courtney Jennings, sitting on the couch in the living room; is  
21 that correct?

22 A Yes, sir.

23 Q And the front door of the house would be to the right out  
24 of the margin of this picture; is that right?

25 A Yes, sir. You can see just the edge of the trim of the

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1 door there.

2 Q All right. Now, you indicated that you were involved in  
3 the interview of Courtney Jennings; is that correct?

4 A That's correct.

5 Q And she was also taken to the what I call the exercise  
6 room, that had the weight bench and other exercise equipment;  
7 is that correct?

8 A That's correct.

9 Q And she was in there with you and Agent Williamson; am I  
10 right?

11 A Yes, sir.

12 Q And you had an opportunity, during all the time you were  
13 there, to have ample ability to observe Courtney Jennings as  
14 she appears as a human being; is that correct?

15 A Yes, sir.

16 Q You got a good look at her?

17 A I was with her for 20 or 30 minutes.

18 Q Okay. And you would recognize her if you saw her again;  
19 is that correct?

20 A I think so, yes.

21 MR. ROYAL: Your Honor, I'd ask permission to bring  
22 Courtney Jennings in the courtroom for purposes of an in-court  
23 identification.

24 MS. SMITH: Your Honor, I object. I don't see how  
25 this is relevant.

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1           **THE COURT:** I don't understand what you're doing, but  
2 you're not cross examining. You've got this Miss Jennings some  
3 place and you'd like to bring her?

4           **MR. ROYAL:** Correct.

5           **THE COURT:** We're not going to do that here.

6           **MR. ROYAL:** It goes to the examination of this  
7 photograph that we've talked about that I next want to show the  
8 jury.

9           **THE COURT:** If you've got control and direction of  
10 Miss Jennings, you can do it when do you your case, unless the  
11 Government wants to go ahead and do it now.

12           **MS. SMITH:** No, I object. This is beyond the scope  
13 of the direct examination and it's not relevant.

14           **MR. ROYAL:** The point is I cannot during my case show  
15 Miss Jennings to Agent Nichols. I would like to show her to  
16 him because I want to ask him if he can identify her. I don't  
17 want --

18           **THE COURT:** It's like a lot of other things you're  
19 doing, Mr. Royal. It's very hard, in some cases impossible,  
20 for this judge to understand what you're eliciting in testimony  
21 and why it has anything to do with this case. Now, that's not  
22 everything, but that's a lot of things, and in this case,  
23 Miss Jennings and what you're going to do with her is one of  
24 those questions, and if you have something that's really  
25 relevant and you can proffer it when you're on cross exam, then

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1 perhaps we can bring her in, but not here.

2 **MR. ROYAL:** All right.

3 **BY MR. ROYAL:**

4 **Q** Agent Nichols, in your review of the equipment that you  
5 seized from the house in connection with the search, you found  
6 a still photograph; is that correct?

7 **A** Yes, sir.

8 **Q** And that still photograph was a photograph of a young  
9 woman performing an act of oral sex on a male; is that correct?

10 **A** That's correct, yes, sir.

11 **Q** And the photograph appears to have been taken by the male  
12 figure; is that correct?

13 **A** It does appear, based on the way the photograph is, that  
14 it was taken by a male, possibly the one who's the recipient of  
15 that oral sex.

16 **MR. ROYAL:** Your Honor, could we display that  
17 photograph, your Honor?

18 **MS. SMITH:** I object, your Honor. As I noted this  
19 morning, this is improper impeachment. It cannot be published  
20 to the jury. It's extrinsic evidence.

21 **MR. ROYAL:** Well, my understanding of the  
22 Government's position is that it could be published to the  
23 jury.

24 **MS. SMITH:** Incorrect. And I was very clear about  
25 that. It was extrinsic evidence that is inadmissible in this

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1 trial. He may use it only to impeach, which frankly he's not  
2 doing.

3 **THE COURT:** I agree with the Government's position on  
4 that.

5 **MR. ROYAL:** I'm sorry, your Honor?

6 **THE COURT:** I agree with Ms. Smith.

7 **MR. ROYAL:** I think it's essential that the jury have  
8 a chance to see this photograph in order for me to cross  
9 examine Agent Nichols about it.

10 **THE COURT:** You have said that about several things,  
11 and some of them I can't believe.

12 **BY MR. ROYAL:**

13 **Q** All right. Agent Nichols, you testified about that  
14 photograph before the grand jury; is that correct?

15 **A** Yes, that was part of multiple items we dealt with, but  
16 yes.

17 **Q** Okay. You were asked questions before the grand jury  
18 about that photograph we've just described; is that correct?

19 **A** Yes, I was.

20 **Q** Okay. You were asked if you could identify the people in  
21 that photograph; is that correct?

22 **A** Something to that effect. I don't remember the exact  
23 question, but I'm sure that was asked.

24 **Q** And you testified that the people in that photograph were  
25 Courtney Jennings and Tommy Lee Jones, my client; is that

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1 correct?

2 A Yes.

3 Q You testified to that under oath; is that correct?

4 A That's correct.

5 Q Even though you can't see the face of the male figure in  
6 the photograph?

7 A That's correct.

8 Q But you testified based upon your opportunity to see  
9 Courtney Jennings at the house and close up, you testified that  
10 she was the female in that picture; is that correct?

11 A That is not the sole reason.

12 Q Well, did you recognize her in the picture from seeing her  
13 at the house?

14 A She did have similar facial features to Courtney Jennings,  
15 yes.

16 Q Isn't it true the woman in the photograph was much lighter  
17 skinned than Courtney Jennings is?

18 A It is true that the photograph is taken with what appears  
19 to be a very bright flash which tends to lighten every skin  
20 tone in the room. You also notice in the background that it  
21 appears very dark as a result of that flash.

22 Q And you agree there was some kind of a baby basinet in the  
23 background of the picture; is that correct?

24 A It appears to be, yes, sir.

25 Q And that photograph had a date imprinted on it of

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1 February 22nd, 2011; is that correct?

2 **A** I know it was February of 2011. I'm not sure of the day.

3 **Q** Okay. And this picture was found on something that's  
4 called an SD card; is that correct?

5 **A** Yes, sir.

6 **Q** What is an SD card?

7 **A** An SD card is a small storage device. This one in  
8 particular was about the size of a quarter, and it's something  
9 that you would put in a camera to record video on. That can  
10 also be plugged into the computer and used as storage or for  
11 transferring files.

12 **Q** And you were asked if you found an image of Courtney  
13 Jennings on that SD card; is that correct?

14 **A** Again, I don't know the exact question, but if you're  
15 going to ask me that, I'm going to tell you yes.

16 **MR. ROYAL:** May I approach, your Honor?

17 **THE COURT:** You may.

18 **BY MR. ROYAL:**

19 **Q** Let me hand you a transcript of your testimony --

20 **THE COURT:** We've got to get done here pretty soon,  
21 though, if there's any control you have over what you're asking  
22 and how soon you're done today.

23 **MR. ROYAL:** Thank you, your Honor. I will try to  
24 take a break in the near future.

25

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1 **BY MR. ROYAL:**

2 **Q** Referring to you Page 13, Agent Nichols, of your testimony  
3 before the grand jury on November 5th, 2015. You testified  
4 that Courtney Jennings was performing oral sex on what appears  
5 to be Tommy Lee Jones; is that correct?

6 **A** The exact quote is, "She is performing oral sex on what  
7 appears to be Tommy Lee Jones."

8 **Q** And that was a reference to Courtney Jennings, correct?

9 **A** Yes.

10 **Q** And I asked the date that was taken, you said  
11 February 22nd, 2011?

12 **A** That's correct.

13 **Q** And were you asked if you had done a forensic review of  
14 that date?

15 **A** That's correct -- no -- yes, yes, I did.

16 **Q** And you said that you got several dates connected with  
17 this photograph; is that correct?

18 **A** No.

19 **Q** Okay.

20 **A** That quote you're talking about there is in general.

21 **Q** Not directed to this specific photo?

22 **A** Yes, sir.

23 **Q** All right. Fine. Thank you for straightening that out  
24 for me.

25 You said that in your forensic evaluation, you were

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1 looking for the date that was the last time the photograph had  
2 been changed; is that correct?

3 A That is correct.

4 Q What do you mean by changed?

5 A So that is when the photograph is altered in any form or  
6 fashion. That could be when it was taken. It depends, again,  
7 on where the device is located, where the image we're looking  
8 at is located, but in general, I'm looking for the last time  
9 anything changed with that photo, whether it be cropped,  
10 enlarged, zoomed in, resaved, that's the date I was looking at.

11 Q And so your determination from your evaluation was that  
12 the last time that photograph was changed was February 22nd,  
13 2011; is that correct?

14 A Yes, that's what I said.

15 Q And that -- so you're not claiming that's necessarily the  
16 date on which that photograph was taken?

17 A No, I guess it's the date that it was last changed. It's  
18 indicative of a photograph, that's on an SD card, for the last  
19 time it was written to be the date it was taken.

20 Q It could be?

21 A It generally is.

22 MR. ROYAL: With that, your Honor, I would suggest we  
23 break for the day.

24 THE COURT: All right. Are you saying that for the  
25 time being you're done with Agent Nichols?

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1                   **MR. ROYAL:** No.

2                   **THE COURT:** Or you're --

3                   **MR. ROYAL:** I would like to resume my cross  
4 examination tomorrow.

5                   **THE COURT:** -- looking to come back tomorrow morning?  
6 Have you got a lot more to go with him?

7                   **MR. ROYAL:** Yes.

8                   **THE COURT:** I'm not sure how much you're going to do  
9 it, unless you sharpen up a little bit what you're talking  
10 about. I think we're wasting the jury's time on a lot of this.  
11 Anyway, Agent Nichols, you're done for the day I guess and be  
12 back tomorrow I assume.

13                   **THE WITNESS:** Okay. Thank you, sir.

14                   **THE COURT:** And I will ask the jury if they will  
15 accept my thanks for their time here and their attention.

16                   Are you going to sit down or are you going to stand  
17 at the lectern?

18                   And the usual instructions, not to talk to anyone,  
19 including each other and not take in any information from any  
20 place and be ready to accept my instructions when you're going  
21 to deliberate. Actually, some things are hard to believe.  
22 Sometimes I don't believe them when I say them, but I think  
23 we're moving this case pretty well and we're going to move it  
24 more when you get here tomorrow, as long as we can do it fairly  
25 to the Defendant and the Government.

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1           Now, I don't know what's going on outside, but I hope  
2 you be careful out there and stay out of the rain if there is  
3 rain.

4           Thank you. Thank you very much for being here.  
5 Please go to the jury room. 9:00 tomorrow morning.

6                       (Jury out 12:29 p.m.)

7           **THE COURT:** Anything either the Government or the  
8 Defendant would like the record to reflect now?

9           **MS. SMITH:** Yes, your Honor. If I may, we had this  
10 conversation yesterday and again this morning. I think  
11 Mr. Royal has, though I don't think properly, has tried to use  
12 that image from Count 1 to impeach as best he can, and I  
13 maintain my position that it's not relevant to this case. And  
14 so when he comes back to cross examine again tomorrow, I don't  
15 know if he intends on bringing this up again, but it's the  
16 Government's position that the identity of the people in that  
17 image is extrinsic to what needs to be determined in this case.

18           **MR. ROYAL:** Your Honor, I --

19           **THE COURT:** Now, just let me -- that is not something  
20 I ruled on when you objected?

21           **MS. SMITH:** You have. I'm just reiterating that he  
22 went on and on and on about that picture in cross examination  
23 just now, outside of the scope of the direct and outside of the  
24 impeachment rules.

25           **MR. ROYAL:** Your Honor, can I respond?

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1                   **THE COURT:** Yes.

2                   **MR. ROYAL:** I'm not referring or bringing up in any  
3 way Count 1, the fact that it ever existed or the fact that  
4 it's been dismissed. The issue is the credibility of this  
5 witness who is the, frankly, the key witness, in my opinion,  
6 against my client in this case, and the fact that he's a law  
7 enforcement officer does not prevent me from bringing before  
8 this jury evidence that's material that in fact --

9                   **THE COURT:** That has nothing --

10                  **MR. ROYAL:** -- impacts upon his credibility.

11                  **THE COURT:** -- nothing to do with your right to cross  
12 examine, but your being relevant in your cross examination and  
13 your eliciting something that might conceivably help the jury  
14 does have something to do with your cross examination, and to  
15 the extent that I have intervened and said that that is not  
16 appropriate, have sustained objections, that's what I'm  
17 thinking of.

18                  **MR. ROYAL:** Well, my position, your Honor, is that  
19 this witness' identification of Courtney Jennings in that  
20 photograph is a false identification and I can prove it, and  
21 the Prosecutor has obtained a ruling from this Court that my  
22 client's relationship with his stepdaughter is admissible in  
23 this case. So this goes directly to their relationship or  
24 alleged relationship and it goes directly to this witness'  
25 credibility as to whether he testified truthfully under oath

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1 when he claimed it was Courtney Jennings in that photograph,  
2 because I claim -- if I can show the photograph to the jury I  
3 can identify -- I claim if I can be allowed to use this  
4 photograph with other witnesses, I can identify who's in there  
5 and I can then argue to the jury that it was obviously not  
6 Courtney Jennings. Courtney Jennings is obviously not the  
7 person in that photograph, and that goes to the credibility of  
8 this witness on a material issue to this case. That's why I'm  
9 asking the Court to allow me to pursue this line of inquiry  
10 because it's essential to my client's defense.

11 **MS. SMITH:** Your Honor, the Federal Rules of Evidence  
12 are quite clear that if the issue is not material, which it is  
13 not in this case -- he's not charged with that count; he is not  
14 charged with producing that image -- if it's not material,  
15 extrinsic evidence may not be admitted in order to prove a fact  
16 that's not material. As I said this morning, he is allowed --  
17 the proper way to impeach him is to say, "Did you testify that  
18 this was Courtney and the Defendant?" And when he says, "Yes,"  
19 he is allowed to ask, "And that was lie, wasn't it?" And he is  
20 stuck with the answer that the witness gives. That's how the  
21 Federal Rules of Evidence work. They are designed to keep away  
22 from the jury those things that the jury does not need to  
23 concern themselves with deciding. What his intention to do is  
24 to prove that the image is factually inaccurate, which even if  
25 he could prove that it's not them in the picture, that doesn't

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1 prove that the witness made false testimony if he believed it  
2 to be true.

3 **MR. ROYAL:** But I can make --

4 **THE COURT:** You are speaking well and at length and  
5 you're saying what I think I've agreed with before.

6 **MS. SMITH:** Thank you.

7 **THE COURT:** And I agree with it here.

8 **MS. SMITH:** Thank you, your Honor.

9 **THE COURT:** This is, as Ms. Smith just said, even if  
10 it's true, you're beating an issue which is not relevant to the  
11 decision of the jury, and you're doing to it in a way that  
12 could be misleading and I'm not going to allow that.

13 **MR. ROYAL:** I'm not trying to mislead the jury but I  
14 have the right to argue to them --

15 **THE COURT:** I didn't say you were trying to mislead  
16 them but I said what you're seeking could mislead them.

17 **MR. ROYAL:** Well, I don't want to mislead them, your  
18 Honor. I want to present this evidence in front of them and  
19 it's not -- I'm not stuck with his self-serving statement that  
20 he didn't lie. I mean every witness would say that. If that  
21 were the case, we'd have no need for the rules of evidence.  
22 The rules of impeachment allow me to bring out evidence  
23 contrary to the testimony of this witness on a material point.  
24 The identification of Courtney --

25 **THE COURT:** Mister --

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1           **MR. ROYAL:** -- Jennings in the photograph is  
2 material, especially in light --

3           **THE COURT:** Mr. Royal, I've ruled, and I am not going  
4 to spend more time doing it and I think if you have any  
5 question about what you can do with this witness with regard to  
6 that picture and the person in that picture, whether or not  
7 it's who he testified to, you're done. You're not going to do  
8 anything more than on that. That's my ruling.

9           And anybody got anything else to say?

10          **MS. SMITH:** No, your Honor.

11          **MR. ROYAL:** Not at this time, your Honor.

12          **THE COURT:** All right. Well, have a good night and  
13 come in here at 9:00 tomorrow.

14          **MS. SMITH:** Thank you, your Honor.

15          **THE COURT:** Mr. Jones is remanded. You can talk if  
16 you've got something to talk about, but you're remanded.

17                       (Proceedings concluded 12:35 p.m.)

18                       - - -

**C E R T I F I C A T I O N**

19           I, Andrea E. Wabeke, official court reporter for the  
20 United States District Court, Eastern District of Michigan,  
21 Southern Division, appointed pursuant to the provisions of  
22 Title 28, United States Code, Section 753, do hereby certify  
that the foregoing is a correct transcript of the proceedings  
in the above-entitled cause on the date hereinbefore set forth.  
I do further certify that the foregoing transcript has been  
prepared by me or under my direction.

23   /s/Andrea E. Wabeke

October 17, 2017

24   Official Court Reporter  
RMR, CRR, CSR

Date

25                       - - -